



Meeting Date: 10 / 9 / 2012

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input checked="" type="checkbox"/> Public Hearing
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Susan L. Martin, AICP, Planning Manager *SM* Agenda Item No. L-1  
 Reviewed By: City Manager *JLB* City Attorney *SMF* Finance *J.C* Other (Specify) \_\_\_\_\_

**DATE:** September 19, 2012

**TO:** City Council

**FROM:** Susan L. Martin, AICP, Planning Manager *SM*  
Development Services Department

**SUBJECT:** Planning and Zoning Permit No. 12-580-01 (Zone Code Text Amendment), Regulations Concerning Operation of Mobile Food Facilities, Citywide.

**RECOMMENDATION**

That City Council approve the first reading by title only and subsequent adoption of an ordinance establishing regulations concerning operation of mobile food facilities citywide.

**DISCUSSION**

On June 21, 2012, staff presented a draft ordinance to the Planning Commission to allow mobile food facility (MFF) operations in certain areas of the city subject to an approved temporary use permit. That ordinance amendment also included minor changes to Chapter 8 (Vehicles and Traffic) of the City Code to update the list of arterial streets and address the operation of MFFs in public rights-of-way. MFF operators have requested that the zoning code be amended so they can operate their MFFs on private property for extended periods of time. To address these requests, staff supported the temporary use permit process as appropriate for periodic placement of these mobile businesses on private property. The operating standards for MFFs in the proposed zoning provisions of the ordinance are specific to MFFs operating on private property. MFFs operating on public streets must comply with the requirements of Chapter 8. The Commission received public comments - mostly directed to MFFs on private property - and deliberated on the matter, then directed staff to provide additional information and minor adjustments to the proposed ordinance.

Staff returned to Planning Commission on August 16, 2012, with additional information as requested by the Commissioners. Most importantly, the ordinance presented at that meeting accommodated changes to operating standards specific to MFFs operating on private property pursuant to a temporary use permit (TUP), as follows:

- Extend the allowable hours of operation, from 10:00 pm to 11:00 pm;
- Addition of a 500-foot minimum distance from any other eating establishment;
- Extend the TUP period, from 45 days to 180 days;

At the conclusion of the hearing on August 16th, the Planning Commission recommended the draft ordinance be adopted by City Council, with one final change - to allow MFFs to operate for a period of 365 consecutive days without a 30-day waiting period for a new TUP at the same location. The 30-day downtime is currently required of TUPs issued for each temporary use of property to discourage continuous ongoing disruptions to the neighborhood and community. The draft ordinance (attached) includes all adjustments and changes, as recommended by the Planning Commission.

It should be noted that invitees to the stakeholder meetings in May 2012 included about 20 MFF operators as well as their representative attorney, Oxnard Downtown Merchants District, Oxnard Chamber, Oxnard Visitor and Conventions Bureau, Ventura County Harbor District, Ventura County Environmental Health Division, and key City staff members. In addition, staff followed up directly with one or two restaurant owners whose information was provided by attendees of the meetings.

After the first Planning Commission hearing, where there was low attendance by restaurant representatives, staff contacted the Economic Development Corporation of Oxnard (EDCO) for assistance in further outreach efforts. According to EDCO, several restaurants were contacted directly and informed of the pending ordinance proposal. Staff also reached out to the Ventura County Restaurant Association about the proposed ordinance, but no response has been received to date.

Three speakers representing five or six restaurants attended the Planning Commission meeting on August 18<sup>th</sup>, indicating that they were concerned that a broad allowance of the MFFs would have significant impacts on their businesses. Staff also provided contact information to these restaurant representatives at that meeting, but there has been no contact since.

#### 2030 General Plan Conformance

As described previously, this ordinance is primarily focused on MFFs operating on private property. The proposed ordinance limits MFF operations conducted pursuant to a TUP on private property to certain commercial and manufacturing zone districts, and requires such operations be situated at least 500 feet from any property used for residential purposes and/or residential zone districts. As such, the proposal conforms to policies protecting residential neighborhoods. Furthermore, allowing MFF operations on private property promotes entrepreneurial and small business opportunities throughout the city.

#### **FINANCIAL IMPACT**

No financial impact. Approval of the proposed ordinance would allow mobile food facilities, subject to the approval of a temporary use permit. Fees would be collected for such permits.

/sm

- Attachment #1 - Planning Commission Staff Report, June 21, 2012 (without attachments)
- #2 - Planning Commission Staff Report, August 16, 2012 (with attachment B only)
- #3 - Draft Ordinance

**PLANNING COMMISSION  
STAFF REPORT**

**TO:** Planning Commission  
**FROM:** Susan L. Martin, AICP, Planning Manager  
**DATE:** June 21, 2012  
**SUBJECT:** Planning and Zoning Permit No. 12-580-01, (Zone Code Text Amendment), Regulations Concerning Operation of Mobile Food Facilities, Citywide.

- 1) **Recommendation:** That the Planning Commission adopt a resolution recommending that the City Council approve Planning and Zoning Permit No. 12-580-01 for a zone code text amendment, subject to certain findings.
- 2) **Project Description and Applicant:** A proposal to amend portions of the Oxnard City Code to address the operation of mobile food facilities within the city limits. The amendment would be effective throughout the city, and include changes to Chapter 8 (Vehicles and Traffic) and Chapter 16 (Zoning). The Planning Commission's action on this matter is a recommendation to the City Council. Filed by the City of Oxnard, Planning Division, 214 South C Street, Oxnard, CA 93030.
- 3) **Background Information:** Since 2007, there has been a growing interest by vendors in establishing mobile food facilities (MFF) as a permanent business prospect in the City of Oxnard. As the MFFs vendors began establishing their operations, there were complexities with the Oxnard City Code in supporting these businesses. The requirements for a peddlers permit is addressed in Chapter 11 (Permits) of the City Code, while Chapter 8 (Vehicles and Traffic) places restrictions as to time and place for vending from vehicles, wagons, and pushcarts. These Code requirements are suitable for ice cream trucks and lunch wagons, as these operators do not stand or park their vehicles for extended time periods.

Operation of a MFF is different from the ice cream trucks and lunch wagons. The MFF operators who have approached the City indicated a need to locate their facility at specified locations for periods that exceed the Chapter 8 allowance of ten minutes. In addition, while these operators want to establish themselves permanently at certain locations, Chapter 16 (Zoning) of the City Code is arranged to address land uses conducted from permanent structures. Early on, staff encouraged some of the MFF operators to apply to modify underlying land use approvals for the locations they were interested in. A modification to a special use permit approved by the Planning Commission would allow the MFF long-term rights on that particular property, in that such approval runs with the land. Alternatively, staff encouraged the MFF operators to consider pooling their resources and proposing an amendment to the City Code to adequately address their proposed type of use. The MFF

operators made no such application, and Code Compliance officers continued to provide warnings, then citations to the MFF operators for continuing to conduct their business contrary to the City Code.

The Oxnard City Code adequately regulates peddlers, pushcarts, and lunch wagons, and such operation in public areas. Therefore, the discussions herein are primarily focused on the need to provide standards for the operation of MFF uses on private property.

**4) Environmental Determination:** In accordance with Sections 15304 and 15305 of the State CEQA Guidelines, projects involving "minor temporary use of land having negligible or no permanent effects on the environment" and those involving "minor alterations in land use limitations in areas...which do not result in any changes in land use or density" may be found to be exempt from the requirements of the California Environmental Quality Act (CEQA). This proposal minimally expands the list of allowed uses considered temporary, and does not propose to extend the timeframe for such similar uses, nor would the proposal result in any changes to existing land uses or density. Therefore, staff has determined that there is no substantial evidence that the project may have a significant effect on the environment and recommends that Planning Commission accept the Notice of Exemption (see Attachment C).

**5) Analysis:**

**a) General Discussion:** Different dining choices should be recognized, as they provide alternative business opportunities in the city, especially during tough economic times. As estimated by the MFF vendors, a new food vending wagon costs \$55,000 and monthly costs for operating such facilities are approximately \$2,500. By comparison, start-up costs to establish a modest 2,000 square foot fixed restaurant facility are roughly estimated at \$190,000, with monthly operating costs at \$3,300. (Note that these costs do not include staff wages, benefits, workers' comp, etc.) While MFFs represent a relatively low-cost way to start up new food service uses, restaurant owners and City business leaders have stressed the importance of not undercutting Oxnard's existing commercial and restaurant industry. That segment of the public suggests that to allow MFFs without controls may be considered unfair competition by established traditional brick-and-mortar restaurants, who have already invested heavily in the community. However, with the rising interest in establishing MFFs, this food evolution is taken seriously, as the MFFs offer a popular alternative method by which the Oxnard community and visitors can purchase prepared foods.

The amendment proposed herein serves as a starting point for the Planning Commission, and ultimately, the City Council, to determine the degree of flexibility for this alternative food business they are willing to support. Staff reviewed ordinances from cities that directly regulates MFFs through zoning ordinance, or have had success in establishing such guidelines. The proposed ordinance addresses the need for MFFs to locate in appropriate areas, while allowing ample opportunities throughout the city for MFFs to start up these services.

**b) Summary of Other Cities' Requirements:** Although popular, the food truck evolution is no longer a new phenomenon. Some jurisdictions have already made adjustments to their ordinances and permit procedures to accommodate this type of use – others have not yet delved into this matter, or are still considering the available options. There are a number of similarities amongst the cities studied by staff, but guidelines for regulating MFFs differ considerably.

While one city specifically prohibits MFFs in commercial zones, most municipalities embrace such uses in commercial and industrial zones. MFFs are consistently excluded from residential areas in the communities staff reviewed.

All cities reviewed require compliance with the County Environmental Health agencies and require a valid city business license or registration for operation of a MFF. Most of the communities surveyed require encroachment permits from their Public Works Department for operation of MFFs on public streets. However, there are significant differences in permitting requirements for operation of MFFs on private property. Some require permits issued by the Police Department, while others require permits issued by the Planning Department. Even those permits issued by the Planning Departments differ, as some require a Temporary Use Permit while some require an Administrative Permit and others require a Special Use Permit (used interchangeably with Conditional Use Permit).

Of the jurisdictions surveyed, the permit fees, due to the dissimilar processes involved, for MFFs range from \$25 to more than \$3,000. The extent of these differences makes it impossible to do a side-by-side comparison of the various standards and permitting requirements of these jurisdictions. However, for those interested, staff has included a summary of the other cities studied in Attachment B of this staff report.

Staff determined that existing sections of the City Code could be efficiently amended to address operation of MFFs in Oxnard. Minor changes to Chapter 8 (Vehicles and Traffic) would be sufficient to manage those MFFs located in public streets. The intent of Chapter 16 (Zoning) generally supports land uses conducted from enclosed buildings. Typically, special use permits are approved pursuant to Section 16-530 et. seq., and such approvals run with the land, which means subsequent property owners or successors would be entitled to the privileges allowed by a special use permit. However, MFFs operating on private property seemed appropriate under Division 15 of Chapter 16 (Temporary Uses). Specifically, Section 16-475 clarifies that "A 'temporary use' is one which occupies a parcel of land for a period of more than one hour within 24-hour period, but less than the maximum time limits set forth herein; [and] does not utilize any permanent structures..."

As proposed, the amendment expands on the standards for MFFs that are consistent among the other cities, and includes particular requirements that support the City of Oxnard's values as identified in the recently adopted 2030 General Plan.

**c) Synopsis of Proposed Amendment:** The amendment proposes clarifications to Chapters 8 and 16 of the Oxnard City Code. In Chapter 8, the amendment would modify existing regulations for on-street parking. As MFFs are operational vehicles, they may park on the street, in accordance with the Vehicle Code. As such, section 8-47 updates the list of major arterial streets, and revises time, place and manner public safety restrictions consistent with the Vehicle Code.

In Chapter 16, the amendment would allow MFFs to operate on private property in particular zone districts pursuant to a TUP or as an accessory use (depending on the zone) in accordance with specified operating standards. A definition for mobile food facility was added to section 16-10. MFFs were added as new accessory uses to the M-L and M-1 zone. Operating standards are provided in section 16-442, a new Code section. The Temporary Use Permit (TUP) section (Division 15) was updated to include MFFs. Staff also took the opportunity to include some additional clean-up language in the TUP section to clarify existing application of the TUP process (see Attachment A).

**d) General Plan Consistency:** The proposed ordinance amendment has been determined to be consistent with the General Plan. Consistency with the 2030 General Plan is defined by the relationship between 2030 General Plan policies and the proposed project. The three consistency classification levels are:

- I. Direct Applicability to a Proposed Project or Program (full text of the policy and an explanation).
- II. Related or Indirect Applicability to the Proposed Project or Program (policy title and an explanation for each or groups of related or indirectly related policies).
- III. No or Distant Applicability to the Proposed Project or Program (all policies not listed as Level I and II are assumed to be consistent).

POLICY	LEVEL	POLICY OR TITLE	EXPLANATION
CD-3.1	II	Neighborhood Preservation: protect residential neighborhoods.	As proposed, the placement and operation of MFFs would occur in appropriate areas, consistent with other commercial and food service uses. Such facilities would maintain the integrity of existing commercial environments while preserving residential areas from encroachment of incompatible land uses.
CD-18.1		Attract New Businesses: encourage uses compatible with the community and not detrimental to the existing economy.	
CD-19.2		Complementary Development: complimentary role for continued economic success.	
CD-15.1	II	Quality of Life: maintain and enhance quality of life through better business opportunities.	The proposed amendment provides opportunities for MFFs to become a viable alternative food service models, supporting the entrepreneurial spirit of the operators as small business owners.
CD-16.7		Flexibility in Regulation Implementation: allow updates to regulations to adequately respond to market conditions.	
CD-18.2		Small Business: promote entrepreneurial and small business expansion.	
All others	III	All policies not listed above	Distant or No Applicability to the Proposed Amendment to the Oxnard City Code

## 6) Planning Commission Considerations:

- a) **Heritage Square Food Truck Event:** Since September 2011, the Oxnard Downtown Management District (ODMD) has sponsored a food truck event on the First Thursday of each month. The monthly event takes place in the Heritage Square parking lot, located on the north side of Eighth Street, between A and B Streets. As the first such event in the City, a Temporary Use Permit (TUP) was issued. Although the TUP allows up to 18 food trucks, typically there have been 10-12 onsite for each event. The MFF vendors advertise gourmet menu offerings, and rotate so as to comply with the requirements of the Ventura County Environmental Health Division. Recently, the event moved to the Elks Lodge, across the street from Heritage Square, on a one-time TUP to clarify some of those regulations enforced by the County. The Heritage Square Food Truck event has been successful in bringing new patrons to Downtown Oxnard, and has been well-received by the community.
- b) **Addition of C-1 Zone as MFF Venue:** There are several MFFs currently operating in the community. They are scattered throughout the city, and almost all offer tacos as their food specialty. These operators indicate the need to be in closer proximity to their customers (i.e. residents) and request the C-1 zone district be considered as an allowable venue. While the C-1 zone is intended to provide convenience shopping and personal services primarily to serve neighborhoods, specialty retail food establishments are permitted, but "drive-in or take-out café or restaurant" uses are specifically prohibited under section 16-124(C). As an outdoor operation, staff has excluded C-1 from the list of allowable zone districts in the proposed amendment, as MFF operations would be contrary to the intent of the Oxnard City Code.
- c) **Timeframe for MFF as Temporary Operation:** The vendors currently operating MFFs in the city have claimed the proposed timeframe of 45 days at one location limits their earning potential - that the requirement to relocate after 45 days would negatively affect their business at their established locations. Related to this is the limitation on the number of TUPs which can be issued for any one location and the requirement for a 30-day rest period between TUPs. The preference of the MFF vendors is for a one year timeframe, which could then be renewed for subsequent years without a 30-day waiting period in-between. Also, they request consideration of an operational period up to 12:00 a.m. (midnight) in order to meet their customers' needs.

The nature of a temporary use is that it is intended to be temporary. As such, the TUP ordinance establishes a 30-day rest period between any TUPs on a particular site. The next higher timeframe established in the City Code for TUPs is 180 days, which is specific to youth, charitable or nonprofit organization projects, or agricultural stands for produce grown on-site. These uses did not seem to be in the same commercial category as the MFF operations, and staff felt the 45-day period was most appropriate for this type of outdoor use.

Although the 45-day limit would require the MFF to find another location, the proposed ordinance would allow each MFF operator to have two valid TUPs at any one time. It is possible for each operator to conduct business year-round. This could be accomplished by moving the MFF every 45 days from one location to another, amongst three separate sites. The restriction would be on the property owner, who could have no more than three such outdoor events in any calendar year. This limitation also safeguards the property from too many outdoor events, which could negatively affect the integrity of the neighborhood.

- 7) Stakeholder Workshop:** On May 8, 2012, Planning Division staff conducted a meeting with several community groups, as well as a number of the MFFs currently operating within the City boundaries. The meeting was well attended, including representatives from various City departments, Ventura County Environmental Health Division, Oxnard Downtown Merchants District, and about 20 MFF operators and their legal representative.

There were a few points that the MFF operators concurred with the proposed amendment. Some limitations on operational standards were acceptable to the operators who attended the workshop meeting. Specifically, this included the restriction on chairs and seating, entertainment, and any requirement consistent with that of the Ventura County Environmental Health Division.

The MFF operators had several concerns with the proposed amendment, as well. The MFF operators indicated the need to be closer to their customers - especially residents - and requested the C1 zone district be considered as an allowable venue. They felt the maximum allotment of 45 days at one location was limiting - they preferred a one year timeframe, which could then be renewed for subsequent years. Also, they did not want to move from their already established locations. As to their operational period, they indicated a need to operate as late as midnight for their customers. For the reasons described in this report, staff was not comfortable making such adjustments to the proposed ordinance.

As originally drafted, the trucks were limited to operating four hours daily for five days. The operators indicated they would need at least five to six hours onsite if the timeframe included set-up and clean-up. They also indicated the five day limitation does not afford an adequate opportunity to conduct the business; their preference was to be allowed to operate seven days a week for more flexibility, so they can choose which days to operate. As a result of the stakeholders meeting, the draft as presented has been adjusted to allow a maximum six hour timeframe, and the number of operational days in a seven-day period has been increased to six.

Staff also presented the proposed MFF ordinance to the City Wide Enhancement Program on May 10, 2012. There were some clarifying questions at this meeting, but no particular requests for further adjustments to the proposed language.

**8) Appeal Procedure:** The Planning Commission's action is a recommendation and the matter will be considered by the City Council at a later date.

**Attachments:**

- A. Proposed Text Changes to Oxnard City Code in Strike-Through and Underline
- B. Summary of Other Cities Researched
- C. Notice of Exemption
- D. Resolution

**PLANNING COMMISSION  
STAFF REPORT**

**TO:** Planning Commission

**FROM:** Susan L. Martin, AICP, Planning Manager

**DATE:** August 16, 2012

**SUBJECT:** Planning and Zoning Permit No. 12-580-01, (Zone Code Text Amendment), Regulations Concerning Operation of Mobile Food Facilities, Citywide.  
[ITEM CONTINUED FROM JUNE 21, 2012 MEETING]

- 1) **Recommendation:** That the Planning Commission adopt a resolution recommending that the City Council approve Planning and Zoning Permit No. 12-580-01 for a zone code text amendment, subject to certain findings.
- 2) **Project Description and Applicant:** A proposal to amend portions of the Oxnard City Code to address the operation of mobile food facilities within the city limits. The amendment would be effective throughout the city, and include changes to Chapter 8 (Vehicles and Traffic) and Chapter 16 (Zoning). The Planning Commission's action on this matter is a recommendation to the City Council. Filed by the City of Oxnard, Planning Division, 214 South C Street, Oxnard, CA 93030.
- 3) **Summary of Previous Meeting:** On June 21, 2012, the Planning Commission considered a draft ordinance for the above-referenced subject at a duly noticed public hearing. While some of the text amendment distinguishes traditional lunch trucks and clarifies operations on public rights-of-way, the amendment primarily addresses operation of mobile food facility (MFF) uses on private property. As MFFs are considered temporary outdoor uses, staff presented amendments to the City Code which would allow such MFFs to conduct business with written consent of the property owner, with an approved temporary use permit for a period of 45-days at each approved site, and in compliance with requirements pertaining to location/distance and operational standards.

At that meeting, some food truck operators indicated their general support for the ordinance. However, they requested the Commission consider allowing operation of MFFs between 6:00 p.m. and 12:00 a.m. (midnight) in order to avoid conflicts with existing restaurant operations. The operators also requested consideration for an annual permit, that the proposed 45-day limitation was too restrictive on their earning potential. They also requested closer proximity to residential areas to better serve their customers. It was also suggested the City allow a maximum number of MFF permits so as not to oversaturate the demand for such services.

Members of the public indicated concern with the safety of the food and/or food handlers, with placement of such facilities near residential uses and schools during school hours, and were opposed to allowing such trucks to park in the same location day after day. The Commission was also asked to consider allowing multiple MFFs in special situations, such as school events, and minimize potential conflicts with existing restaurants, and maintain equitability with restaurant operators.

During their deliberations, the Commission concurred with many comments received and directed staff to provide clarification, conduct further investigation, and make additional adjustments to the draft ordinance.

**4) Clarifications:** At the previous meeting, the Planning Commission inquired about some related functions at Oxnard College, and requested a more detailed comparison of the MFFs and permanent (brick and mortar) restaurants.

**a) Oxnard College Activities:** As an educational institution, Oxnard College has an obligation to provide meals for its student and faculty population. Traditionally, a cafeteria would serve this function, but now commercial fast food establishments and food trucks are more typical. As such, MFFs located on the school campus, if not part of a fund-raising event, are considered part of the educational mission of the college.

Similar inquiries were raised about food service at the Oxnard College Community Market. In 2001, the City issued a special use permit (SUP) for Oxnard College to conduct the outdoor swap meet use for up to 350 vendors, with hours of operation limited between 8:00 a.m. and 3:00 p.m. on Saturday and Sunday only. With respect to food sales, the SUP allows food sales, but prohibits sale of any material or food from pushcarts.

**b) Cost of Doing Business:** Previously, staff acknowledged MFFs as a recognized dining alternative. It was also noted that while MFFs represent a relatively low-cost way to start up new food service uses, restaurant owners and City business leaders have stressed the importance of not undercutting Oxnard's existing commercial and restaurant industry. Allowing MFF uses without controls may be considered unfair competition by established traditional brick-and-mortar restaurants. While there are unknown factors that will affect the estimates provided, staff worked with representatives of the existing Oxnard MFFs, the Oxnard Downtown Management District (ODMD), and consulted with other staff members to complete the following cost comparison data:

Factors	Restaurant (estimate 2,000 SF floor area)			Mobile Food Facility		
	One-Time	Annual	Monthly	One-Time	Annual	Monthly
Location/Lease			40,000			2,050
Improvements	325,000			55,000		
Land Use	2,500			135		

Factors	Restaurant (estimate 2,000 SF floor area)			Mobile Food Facility		
	One-Time	Annual	Monthly	One-Time	Annual	Monthly
Approvals						
EHD Permit-to-Operate		700			470	
Business Tax Certificate	70	350		70	95	
Insurance		1,800			4,800	
Utilities			335			
<b>TOTALS</b>	<b>\$327,570</b>	<b>\$2,850</b>	<b>\$40,335</b>	<b>\$55,205</b>	<b>\$5,365</b>	<b>\$2,050</b>

Leasing of restaurant space in Oxnard varies greatly depending on location and condition of the tenant space, with the general range from \$12 to \$35 per square foot of floor area. For this purpose, staff used the average rate (\$20) to determine a minimum monthly lease rate for a 2,000 square foot restaurant. The MFF cost includes the commissary rental and the rate for leasing the private property on which the MFF is located.

Building & Engineering staff's estimate for restaurant improvements includes equipment, furnishing, and construction permits for build-out of a typical (not high-end) café or restaurant space. The cost of a new food service truck is included in the MFF category. For comparison purposes, these are both included as one-time fees.

A special use permit would only be required if a café or restaurant wanted to serve alcohol at the establishment. Therefore, this is an optional item only. For MFFs, the temporary use permit fee is presently proposed as the appropriate land use permitting process. The fee shown is for two such permits per site.

County Environmental Health Permit fees are provided by representatives of ODMD and the MFF operators.

It is important to note that the City business tax rate varies, based on the reported gross income, but is the same calculation for both restaurants and MFFs. The figures shown are provided by representatives of ODMD and the MFFs. The restaurant amount is for a business grossing about \$270,000 annually. As a cash-only operation, there is some concern that the MFFs may be underreporting their income, and therefore pays less to satisfy their business tax certificate. Additional city taxes would result for restaurants that offer other activities such as entertainment.

Insurance for a restaurant consists primarily of property liability, while a MFF is considered a vehicle. Therefore, the MFF cost is higher in this category.

Brick-and-mortar restaurants will have monthly electricity, gas, water/sewer/trash, wastewater fees. The MFFs will not have these concerns, as they carry generators onboard the vehicles and are self-sufficient in this regard.

**5) Further Investigation:** The Commissioners requested additional information on the following issues and concerns raised at the previous meeting:

- a) Proximity to Restaurant Uses:** Staff had previously, but internally, identified possible concerns with proximity to existing restaurant uses. However, with no stakeholder input received highlighting such concerns, and at that time, no examples of such limitations identified from other agency regulations, staff did not propose a minimum distance requirement in the previously proposed ordinance.

With Planning Commission's interest and direction to staff, subsequent outreach and evaluations of MFF regulations in other California cities has been conducted. Staff contacted EDCO for assistance in organizing a coordinated effort with area restaurants. As of the printing of the staff report, staff has not received input on any additional restaurant concerns. In an updated summary of MFF regulations by some California cities, staff notes that a few cities have included a minimum proximity to other dining establishments. These vary greatly, from 200 feet (Emeryville) to 1000 feet (Lemore) to "determination by the Community Development Director" (Oakley).

Under the previously proposed ordinance, Planning Commission supported the proposal that MFFs be located at least 500 feet from another MFF. As such, staff recommends that MFFs operating on private property maintain a minimum proximity of 500 feet from any other eating establishment during that establishment's operating hours.

- b) Accident Rates:** To date, there are no statistics specific to accident rates associated with parked MFFs, either on public rights-of-way or on private property.
- c) Limit Number of MFF Permits:** There are significant restrictions proposed which would essentially limit the number of MFFs operating in the city. As proposed, MFFs on private property may not be situated so as to impede line-of-sight, and must maintain the following minimum distance requirements:
- 500 feet from residential use/zone
  - 900 feet from school, day care, or public park
  - 500 feet from any other food serving establishment
  - 500 feet from any other MFF

With MFFs allowed on private property only in certain commercial and industrial zone districts, along with the various location requirements itemized above, staff feels there are adequate rules in place to limit the number of MFFs operating in the city without being overly rigid.

**6) Adjustments to Draft Ordinance:** Based on input provided by Commissioners and comments received since the meeting on June 21st, the previously proposed ordinance has been adjusted as follows:

- a) **Extend Hours of Operation:** There was general consensus among the Commissioners to extend the permissible hours of MFFs to 11:00 p.m., and until midnight (12:00 a.m.) on Fridays and Saturdays. This adjustment is shown in proposed ordinance section 16-442(B)(6).
- b) **Proximity to Restaurant Uses:** As stated above, staff recommends that MFFs parked on private property maintain a minimum proximity of 500 feet from any other eating establishment during that establishment's operating hours. This adjustment is shown in proposed ordinance section 16-442(B)(9)(d).
- c) **Extend TUP Timeframe:** At the Planning Commission's direction, the TUP timeframe for MFFs has been increased, from 45 days to 180 days. The Commission, at the previous meeting, discussed equitability of MFFs and brick-and-mortar restaurants. MFFs are mobile operations, not permanently located business establishments. While MFFs are a popular alternative method by which the Oxnard community and visitors can purchase food items, it should not be at the detriment of permanent food establishments, which have contributed significantly in setting up their business operations. It would be unfair to restaurants to allow MFFs as a long-term solution. The adjustment to 180 days is shown in proposed ordinance section 16-479(A)(5)(c).
- d) **Remove Fee Waiver:** A comment received on the draft ordinance identifies section 16-478, which states "the nonrefundable [temporary use permit] fee may be waived at the written request of the applicant and upon the approval of the city manager for charitable, youth or nonprofit organization projects." It has been brought to staff's attention that only the City Council has the authority to waive established fees, that this language is contrary to the authority allowed staff. As such, this is considered a clean-up issue.

7) **Appeal Procedure:** The Planning Commission's action is a recommendation and the matter will be considered by the City Council at a later date.

**Attachments:**

- A. June 21, 2012 Planning Commission Staff Report w/o Attachments
- B. Proposed Text Changes to Oxnard City Code
- C. Notice of Exemption
- D. Resolution

## ATTACHMENT "B"

### Proposed Text Changes to Oxnard City Code

As previously presented to Planning Commission on 6/21/2012,  
Deletions shown in ~~strike through~~; Additions shown in underline;

Includes most current adjustments, shown in yellow highlight,  
Additions since 6/21/2012 also shown in *italics*.

**SEC. 8-47. TIME AND PLACE RESTRICTIONS ON VENDING FROM VEHICLES, WAGONS AND PUSHCARTS.**

(A) Except as provided in this section, no person shall stand or park any vehicle or any non-motorized wheeled container, such as a wagon or pushcart, from which merchandise, food or other items are sold or displayed or offered for sale, barter or exchange, on any portion of any street, alley, sidewalk or public property within the city.

~~— (1) — Such vehicles or containers may stand or park only at the request of a bona fide purchaser for a period of time not to exceed ten minutes at any one place; provided, however, that such containers may not stand or park at all in a place described in subsection (A)(3) of this section.~~

~~— (2) — The new place of operation required by subsection (A)(1) of this section shall be a minimum distance of 500 feet from the prior stopping place;~~

~~(1)(3)~~ No person shall stand, park or operate such vehicle or containers within or from the following locations:

(a) The public right-of-way on C Street, Channel Islands Boulevard, Camino Del Sol, Del Norte Boulevard, Fifth Street, Gonzales Road, Harbor Boulevard, Hueneme Road, Oxnard Boulevard, Pleasant Valley Road, Rice Avenue, Rose Avenue, Saviers Road, Ventura Road, Victoria Avenue, Vineyard Avenue, E Street, Ventura Road, Channel Islands Boulevard, Oxnard Boulevard or Saviers Wooley Road;

(b) ~~or~~ The public right-of-way within 100 feet of any intersection, or within 50 feet of any driveway or of another such vehicle or container standing or parked on the public right-of-way.

~~(2)(4)~~ Every person operating such vehicles or containers shall have in his or her possession a valid business ~~license~~ tax certificate to peddle issued by the city.

~~(3)(5)~~ No person shall stand or park any such vehicle or container within 900 feet of any school or day-care center between 7:00 a.m. and 4:00 p.m.

~~(4)(6)~~ In residential areas, as shown on a map on file with the license collector, no person shall stand or park any such vehicle or container on any day before 9:00 a.m. or sunrise, whichever is later, or after 7:00 p.m. or sunset, whichever is earlier.

~~(5)(7)~~ When standing or parking ~~at the request of a bona fide purchaser, as permitted by subsection (A)(1) of this section,~~ the person operating such vehicle or container shall:

(a) Stop playing music, ringing bells or making other noise that advertises such person's presence or wares; and

- (b) Provide a visible trash receptacle for use by bona fide purchasers.
- (B) The provisions of this section shall not apply to:
  - (1) A person delivering items from a store or other fixed place of business or distribution to a customer pursuant to an order of, or by agreement with, such customer;
  - (2) A person who has obtained a temporary use permit to stand or park such a vehicle on specific public property; or
  - (3) A person who has a written license agreement with the city to stand or park such vehicle on specific public property.

**SEC. 16-10. DEFINITIONS.**

(A) For the purposes of this chapter, the following words shall have the following meanings:

(75) MOBILE FOOD FACILITY – Any vehicle used in conjunction with a commissary or other permanent food facility, as those terms are defined in the California Retail Food Code (Cal. Health and Safety Code sections 113700 et seq.), upon which food is sold or distributed at retail.

**DIVISION 13. M-L LIMITED MANUFACTURING ZONE**

**SEC. 16-190. ACCESSORY USES PERMITTED.**

The following accessory uses are permitted in the M-L zone:

- (A) Administrative, executive and/or corporate offices which are a part of a predominantly industrial operation, including governmental offices and facilities;
- (B) Cafeterias and mobile food facilities operated in conjunction with permitted uses for the convenience of persons employed on the premises;

**DIVISION 14. M-1 LIGHT MANUFACTURING ZONE**

**SEC. 16-225. ACCESSORY USES PERMITTED.**

The following are accessory uses permitted in the light manufacturing zone:

- (A) Dwelling units, limited to one per establishment, for security or maintenance personnel and their families, when located on the premises where such personnel are employed in such capacity. No other residential use shall be permitted;
- (B) Employees' recreation facilities and play areas;

(C) Cafeterias, and mobile food facilities when operated in conjunction with permitted uses, for the convenience of persons employed on the premises;

## DIVISION 1. GENERAL REQUIREMENTS

### 16-319.5. MOBILE FOOD FACILITY AS ACCESSORY USE DURING DEVELOPMENT

Mobile food facilities shall be allowed as an accessory use only in conjunction with development of uses permitted by the applicable zone for the convenience of persons employed in construction of the development. Such accessory use shall be located on or immediately adjacent to the site of the development.

## ~~DIVISION 10. OIL DRILLING DISTRICTS. MOBILE FOOD FACILITIES~~

~~[RESERVED]~~

### 16-442. MOBILE FOOD FACILITY PERMIT AND OPERATING STANDARDS.

(A) The requirements of this section shall not apply to a mobile food facility operating pursuant to a written agreement with the city authorizing that mobile food facility's operations on a particular street or public property.

(B) Unless otherwise permitted by the city code, and except to the extent local regulation is preempted by the California Retail Food Code or California Vehicle Code, mobile food facilities shall adhere to the following permit and operating standards:

(1) A valid temporary use permit, issued in accordance with division 15 of article V of this chapter, is required for each mobile food facility to operate at a particular location.

(2) A mobile food facility operated on city-owned property shall maintain insurance as specified in the temporary use permit.

(3) Prior to approval of a temporary use permit for operation of a mobile food facility at a particular location, the applicant shall submit proof of compliance with all applicable state, federal, and County Environmental Health Division regulations and certifications, and shall maintain compliance with such regulations and certifications for the duration of the temporary use permit authorization period.

(4) Only one mobile food facility may be approved for operation at a particular location at a time. Each mobile food facility may have no more than two approved active temporary use permit locations. Written permission of the property owner stating the terms of use shall be submitted *with the temporary use permit application.*

(5) The location of the commissary serving the mobile food facility in accordance with the California Retail Food Code shall be designated in the temporary use permit application.

(6) Mobile food facilities shall ~~only operate~~ be allowed to remain at permitted locations between the hours of 7:00 a.m. and ~~10:00~~ 11:00 p.m., Sunday through Thursday, and on Friday and Saturday, between the hours of 7:00 a.m. and 12:00 a.m. Parking of a mobile food facility at any location (inclusive of set-up and clean-up times) shall be limited to 6 hours daily for 6 days within any seven-day period. The hours and days of operation shall be stated on the temporary use permit application and may only be modified by the director's approval of a new application setting forth the proposed operating hours.

(7) Liquid waste originating from a mobile food facility shall be disposed of in compliance with all federal, state and local laws, including the provisions of any NPDES permit issued by the State. In no case shall any such waste be discharged or disposed of onsite.

(8) Each mobile food facility shall have the following supporting provisions visibly available and accessible, for the duration of the approved hours of operation:

(a) Adequate number of trash and recycling receptacles, but in no case less than two, to contain the amount of anticipated trash during the authorized operational period. The receptacles shall be set up and removed by the operator, at the beginning and closing of each such period. In-truck hatch receptacles are not sufficient. The operator shall not dispose of or allow disposal of any refuse or waste in any public or private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of such operator.

(b) Restroom facilities in clean working order available for operator and customer use, including operational toilets and hand-washing facilities with hot water, soap, and paper towels. Such restroom shall be located no further than 200 feet from the parked mobile food facility, and shall be available during the mobile food facility hours of operation. If such restroom facilities are not owned, operated, or otherwise provided by the operator, a written agreement by the owner of such facilities, stating the terms of availability of the facilities, shall be a part of the TUP application and approval.

(c) On-site parking for operations conducted on private property. Placement of the mobile food facility on private property shall not reduce the number of parking spaces below that which is required for the existing on-site uses during business hours of the on-site uses.

(d) Adequate lighting to ensure customer safety. Such lighting may be provided on the vehicle, or at the location of the mobile food facility, and shall be provided in accordance with section 16-320 of this code through the authorized operational periods. No such lighting shall be of a type or in a location that constitutes a hazard to vehicular traffic, either on private property or on public right-of-way, and must be shielded or otherwise deflected away from adjoining properties.

(e) The mobile food facility shall be entirely self-sufficient in regards to gas, electricity, water, and telecommunications. Should any utility hookups or connections to on-site utilities be required, the operator shall obtain appropriate permits prior to such connections being made and prior to initiation of such use.

(9) A mobile food facilities shall comply with the following location requirements:

(a) Neither the mobile food facility nor any of the required support items, described in subsection (B)(8) of this section, shall obstruct or interfere with the free flow of pedestrian or vehicular traffic, including to or from any business, public building, or residence;

(b) A mobile food facility shall not be located within 500 feet of any property used for residential purposes or within 500 feet of any residential zone districts;

(c) A mobile food facility shall not be located within 900 feet of the property line of any school, day care facility, or public park;

(d) A mobile food facility shall not be located within 500 feet of the property line of any other food serving establishment during that establishment's operating hours. A food serving establishment is one whose principal use is the preparation of food and/or beverages, including but not limited to a restaurant, fast food restaurant, or café.

(e) A mobile food facility shall not be located within 500 feet of a site for which a TUP has been issued for any other mobile food facility.

(f) A pathway to the vending window must be provided that complies with state and federal requirements for access to public accommodations by persons with disabilities.

(g) A mobile food facility shall be located so that no line-of-sight issues result from such placement and so that all public rights-of-way are not otherwise affected.

(10) No mobile food facility shall use, play or employ any sound, outcry, amplifier, loudspeaker or any other instrument or device for the production of sound where said sound exceeds the exterior sound standards specified in section 7-185 of this code.

(11) No televisions, radios, or other device intended for amusement or entertainment purposes shall be operated in conjunction with a mobile food facility.

(12) No tables, chairs, furniture or other devices to provide patron seating shall be allowed, unless specified in the temporary use permit.

(13) Signs for a mobile food facility shall be limited to those on the vehicle only, and shall otherwise comply with article IX of this code.

## **DIVISION 15. TEMPORARY USES**

### **SEC. 16-476. PERMITTED.**

(A) No uses listed in this section shall be conducted unless a temporary use permit authorizing such a use has been approved. No temporary use shall be permitted to occur within or on public street rights-of-way or public property, including sidewalks, parks and parking lots, unless a temporary use permit has been granted for such uses.

(B) The following temporary uses may be permitted subject to the granting of a temporary use permit in accordance with the provisions of this division:

(3) C-2, CBD and C-P-D zones -

(d) Mobile food facilities in accordance with section 16-442;

(4) C-M, M-L, M-1, M-2, M-P-D and BRP zones -

(d) Mobile food facilities in accordance with section 16-442;

**SEC. 16-477. PERMIT REQUIRED; PERMIT APPLICATION; ISSUANCE OF PERMIT.**

(A) A temporary use permit shall be approved at least seven days prior to the commencement of ~~any~~ the temporary use. An application for a temporary use permit shall be ~~made~~ submitted on an application form secured from the director. ~~Such~~ The application shall ~~require~~ provide the information necessary for review of the application by appropriate city departments, and shall include ~~ing~~ the name, address, telephone number and signature of both the applicant and property owner, and the project location.

**SEC. 16-478. FEE.**

A nonrefundable fee in the amount set by city council resolution shall be paid upon the filing of an application for a temporary use permit. The nonrefundable fee may be waived at the written request of the applicant and upon the approval of the city manager for charitable, youth or nonprofit organization projects. Temporary uses may be subject to additional fees or taxes imposed pursuant to this code or other applicable regulations.

**SEC. 16-479. TIME LIMITS.**

(A) The director in conjunction with other affected city departments shall determine the time limitations of temporary uses, which shall not exceed the following maximum time limits for the following uses:

(4) Forty-five consecutive days:

(a) Christmas tree lots or Halloween pumpkin sales.

(5) One hundred eighty consecutive days, with thirty day extension for climatic hardships:

(c) Mobile food facilities in accordance with section 16-442.

(B) For each time limit category, not including A(3) and A(5), nNo more than three outdoor events ~~sales~~ shall occur on the same site or at the same facility during a calendar year.

(C) Upon the removal by the applicant of all materials associated with the approved temporary use, the applicant shall, within 24 hours after the TUP clean-up date and time, request

an inspection by the enforcement division which shall make a recommendation to the director regarding the release or other disposition of the bond, cash or other security deposit.

**SEC. 16-480. EXPIRATION OF USE; REMOVAL OF MATERIALS; BOND REQUIRED.**

(A) All uses permitted by a temporary use permit shall be terminated on or before the expiration date stated upon the permit. All materials or products used in connection with or resulting from the temporary use shall be removed within five days after such expiration date. A bond, cash or other acceptable security in the amount specified by City Council resolution of \$250 to insure removal of all materials, personal property, and structures shall be filed with the director at the time of application for each of the following uses:

- (5) Christmas tree lots or Halloween pumpkin sales.
- (6) Any other temporary use which the Planning Manager determines necessary.

**SEC. 16-481. DENIAL OR REVOCATION PERMIT; APPEAL.**

If, in the opinion of the director and other affected city departments, a proposed temporary use will be detrimental to the public health, safety and welfare, and the adverse impacts cannot be mitigated, the director shall deny or revoke the permit. The applicant may appeal the ~~denial~~ director's decision in writing. The appeal shall state the grounds for appeal and shall be filed with the city clerk, together with the specified appeal fee, within ten days after the date of the director's decision. Said appeal shall be considered by the Hearing Officer, and the decision of the Hearing Officer shall be final. ~~to the commission as provided in sections 16-530 through 16-533. Said appeal shall be final with the commission. Before an appeal is scheduled for hearing, the applicant shall pay a fee as provided by resolution of the city council.~~

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. \_\_\_\_\_

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD APPROVING AMENDMENTS TO CHAPTERS 8 AND 16 OF THE CITY CODE TO ADDRESS THE OPERATION OF MOBILE FOOD FACILITIES WITHIN THE CITY LIMITS AND AMENDING VARIOUS TEMPORARY USE PERMIT REGULATIONS, INCLUDING PERMIT APPEALS. FILED BY THE CITY OF OXNARD, 305 W. THIRD STREET, OXNARD, CA 93030.

WHEREAS, the Oxnard City Code does not currently include provisions for mobile food facilities as a land use; and

WHEREAS, the California Retail Food Code (Cal. Health and Safety Code §§113700 et seq.) establishes local regulatory authority over mobile food facilities and requires mobile food facilities to operate in accordance with the City's zoning ordinance (Cal. Health and Safety Code §113715); and

WHEREAS, section 22455 of the California Vehicle Code authorizes the City to regulate the time, place, and manner of vending from mobile food facilities to protect public safety in the public right-of-way; and

WHEREAS, the City Council acknowledges an increasing interest to establish mobile food facility uses, recognizing that the transitory nature of such uses is unique; and

WHEREAS, the City Council seeks to enact regulations to support placement of mobile food facilities in certain commercial zone districts while maintaining existing quality of life characteristics throughout the City; and

WHEREAS, the mobile food facility regulations protect the public health, safety, welfare, and interests of the residential and business community alike; and

WHEREAS, the City Council supports mobile food facilities as a transitory use that is not intended to operate in a particular location on a permanent basis; and

WHEREAS, mobile food facilities present potential safety hazards in that their size, when parked near intersections and driveways, can obstruct the vision of drivers operating vehicles on, or pedestrians using, the public rights-of-way adjacent to such intersections and driveways, which safety hazards may be reduced by requiring mobile food facilities to park an appropriate distance from intersections or driveways; and

WHEREAS, mobile food facilities present potential safety hazards when parked near intersections and driveways in that their customers queue in the parkway and sidewalk areas of the public right-of-way in a manner that may interfere with the safe operation of such

intersections or driveways, which safety hazards may be reduced by requiring mobile food facilities to park an appropriate distance from intersections or driveways; and

WHEREAS, customers of mobile food facilities parked in the public rights-of-way typically queue in the pedestrian right-of-way while waiting to order food and waiting to receive food orders, and often remain standing in the pedestrian right-of-way to eat food obtained from mobile food facilities, and such congregation of customers interferes with the use of the pedestrian right-of-way for its primary purpose as a pedestrian walkway. The parking of multiple mobile food facilities in close proximity to one another in the public rights-of-way exacerbates such interference and increases the likelihood that pedestrians will not be able to safely travel along the public sidewalk and may be forced to leave the public sidewalk and use a path of travel neither intended, nor safe for pedestrian use. This risk to pedestrian safety can be reduced by requiring mobile food facilities to park an appropriate distance from one another, thereby dispersing customers on the public sidewalk; and

WHEREAS, Sections 15304 and 15305 of the California Code of Regulations exempt the project from the requirement for the preparation of environmental documents imposed by the California Environmental Quality Act; and

WHEREAS, on June 21, 2012 the Planning Commission conducted a duly noticed public hearing on the zone text amendment and accepted comments on the matter; and

WHEREAS, on August 16, 2012 the Planning Commission conducted a duly noticed public hearing on the zone text amendment set forth herein, accepted comments and recommended approval to the City Council; and

WHEREAS, the City Council carefully reviewed Planning Commission Resolution No. 2012-17 recommending approval of Planning and Zoning Permit No. 12-580-01; and

WHEREAS, the City Council finds that the proposed zone text amendment is consistent with the goals and policies of the General Plan; and

WHEREAS, on September \_\_\_\_, 2012, the City Council conducted a duly noticed public hearing and received comments and testimony related to the proposed zone text amendments; and

WHEREAS, the City Council finds after due study and deliberation that the public interest and general welfare require the adoption of Planning and Zoning Permit No. 12-580-01.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES ORDAIN AS FOLLOWS:

Part 1. Subsection (A)(3) of section 8-47 of the City Code is hereby amended to read as follows:

“(3) No person shall stand, park or operate such vehicle or container within or from the

following locations:

(a) The public right-of-way on C Street, Channel Islands Boulevard, Camino Del Sol, Del Norte Boulevard, Fifth Street, Gonzales Road, Harbor Boulevard, Hueneme Road, Oxnard Boulevard, Pleasant Valley Road, Rice Avenue, Rose Avenue, Saviers Road, Ventura Road, Victoria Avenue, Vineyard Avenue, or Wooley Road;

(b) The public right-of-way within 100 feet of any intersection, or within 50 feet of any driveway or of another vehicle or container standing or parked on the public right-of-way.”

Part 2. Subsection (A)(4) of section 8-47 of the City Code is hereby amended to read as follows:

“(4) Every person operating such vehicles or containers shall have in his or her possession a valid business tax certificate to peddle issued by the city.”

Part 3. Subsection (A)(7) of section 8-47 of the City Code is hereby amended to read as follows:

“(7) When standing or parking, the person operating such vehicle or container shall:”

Part 4. Subsections (A)(1) and (A)(2) of section 8-47 of the City Code are hereby deleted and the remaining subsections shall be renumbered accordingly.

Part 5. Subsection (A) of section 16-10 of the City Code is hereby amended by adding the following definition, which subsection shall be reordered alphabetically and renumbered accordingly:

"MOBILE FOOD FACILITY – Any vehicle used in conjunction with a commissary or other permanent food facility, as those terms are defined in the California Retail Food Code (Cal. Health and Safety Code sections 113700 et seq.), upon which food is sold or distributed at retail."

Part 6. Subsection (B) of section 16-190 of the City Code is hereby amended to read as follows:

"(B) Cafeterias and mobile food facilities operated in conjunction with permitted uses for the convenience of persons employed on the premises;"

Part 7. Subsection (C) of section 16-225 of the City Code is hereby amended to read as follows:

"(C) Cafeterias and mobile food facilities operated in conjunction with permitted uses for the convenience of persons employed on the premises;"

Part 8. Section 16-319.5 is hereby added to the City Code to read as follows:

“16-319.5. MOBILE FOOD FACILITY AS ACCESSORY USE DURING DEVELOPMENT

Mobile food facilities shall be allowed as an accessory use only in conjunction with development of uses permitted by the applicable zone for the convenience of persons employed in construction of the development. Such accessory use shall be located on or immediately adjacent to the site of the development.”

Part 9. The heading of Division 10 of Article V of Chapter 16 of the City Code is hereby amended to read as follows:

“DIVISION 10. MOBILE FOOD FACILITIES”

Part 10. Section 16-442 of the City Code is hereby added under Division 10 of Article V of Chapter 16 to read as follows:

“16-442. MOBILE FOOD FACILITY PERMIT AND OPERATING STANDARDS.

(A) The requirements of this section shall not apply to a mobile food facility operating pursuant to a written agreement with the city authorizing that mobile food facility’s operations on a particular street or public property.

(B) Unless otherwise permitted by the city code, and except to the extent local regulation is preempted by the California Retail Food Code or California Vehicle Code, mobile food facilities shall adhere to the following permit and operating standards:

(1) A valid temporary use permit, issued in accordance with division 15 of article V of this chapter, is required for each mobile food facility to operate at a particular location.

(2) A mobile food facility operated on city-owned property shall maintain insurance as specified in the temporary use permit.

(3) Prior to approval of a temporary use permit for operation of a mobile food facility at a particular location, the applicant shall submit proof of compliance with all applicable state, federal, and County Environmental Health Division regulations and certifications, and shall maintain compliance with such regulations and certifications for the duration of the temporary use permit authorization period.

(4) Only one mobile food facility may be approved for operation at a particular location at a time. Each mobile food facility may have no more than two approved active temporary use permit locations. Written permission of the property owner stating the terms of use shall be submitted with the temporary use permit application.

(5) The location of the commissary serving the mobile food facility in accordance with the California Retail Food Code shall be designated in the temporary use permit application.

(6) Mobile food facilities shall be allowed to remain at permitted locations between the hours of 7:00 a.m. and 11:00 p.m., Sunday through Thursday, and on Friday and Saturday, between the hours of 7:00 a.m. and 12:00 a.m. Parking of a mobile food facility at any location (inclusive of set-up and clean-up times) shall be limited to 6 hours daily for 6 days within any seven-day period. The hours and days of operation shall be stated on the temporary use permit application and may only be modified by the director's approval of a new application setting forth the proposed operating hours.

(7) Liquid waste originating from a mobile food facility shall be disposed of in compliance with all federal, state and local laws, including the provisions of any NPDES permit issued by the State. In no case shall any such waste be discharged or disposed of onsite.

(8) Each mobile food facility shall have the following supporting provisions visibly available and accessible, for the duration of the approved hours of operation:

(a) Adequate number of trash and recycling receptacles, but in no case less than two, to contain the amount of anticipated trash during the authorized operational period. The receptacles shall be set up and removed by the operator, at the beginning and closing of each such period. In-truck hatch receptacles are not sufficient. The operator shall not dispose of or allow disposal of any refuse or waste in any public or private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of such operator.

(b) Restroom facilities in clean working order available for operator and customer use, including operational toilets and hand-washing facilities with hot water, soap, and paper towels. Such restroom shall be located no further than 200 feet from the parked mobile food facility, and shall be available during the mobile food facility hours of operation. If such restroom facilities are not owned, operated, or otherwise provided by the operator, a written agreement by the owner of such facilities, stating the terms of availability of the facilities, shall be a part of the temporary use permit application and approval.

(c) On-site parking for operations conducted on private property. Placement of the mobile food facility on private property shall not reduce the number of parking spaces below that which is required for the existing on-site uses during business hours of the on-site uses.

(d) Adequate lighting to ensure customer safety. Such lighting may be provided on the vehicle, or at the location of the mobile food facility, and shall be provided in accordance with section 16-320 of this code through the authorized operational periods. No such lighting shall be of a type or in a location that constitutes a hazard to vehicular traffic, either on private property or on public right-of-way, and must be shielded or otherwise deflected away from adjoining properties.

(e) The mobile food facility shall be entirely self-sufficient in regards to gas, electricity, water, and telecommunications. Should any utility hookups or connections to on-site utilities be required, the operator shall obtain appropriate permits prior to such connections being made and prior to initiation of such use.

(9) A mobile food facilities shall comply with the following location requirements:

(a) Neither the mobile food facility nor any of the required support items, described in subsection (B)(8) of this section, shall obstruct or interfere with the free flow of pedestrian or vehicular traffic, including to or from any business, public building, or residence;

(b) A mobile food facility shall not be located within 500 feet of any property used for residential purposes or within 500 feet of any residential zone districts;

(c) A mobile food facility shall not be located within 900 feet of the property line of any school, day care facility, or public park;

(d) A mobile food facility shall not be located within 500 feet of the property line of any other food serving establishment during that establishment's operating hours. A food serving establishment is one whose principal use is the preparation of food and/or beverages, including but not limited to a restaurant, fast food restaurant, or café.

(e) A mobile food facility shall not be located within 500 feet of a site for which a temporary use permit has been issued for any other mobile food facility.

(f) A pathway to the vending window must be provided that complies with state and federal requirements for access to public accommodations by persons with disabilities.

(g) A mobile food facility shall be located so that no line-of-sight issues result from such placement and so that all public rights-of-way are not otherwise affected.

(10) No mobile food facility shall use, play or employ any sound, outcry, amplifier, loudspeaker or any other instrument or device for the production of sound where said sound exceeds the exterior sound standards specified in section 7-185 of this code.

(11) No televisions, radios, or other device intended for amusement or entertainment purposes shall be operated in conjunction with a mobile food facility.

(12) No tables, chairs, furniture or other devices to provide patron seating shall be allowed, unless specified in the temporary use permit.

(13) Signs for a mobile food facility shall be limited to those on the vehicle only, and shall otherwise comply with article IX of this code."

Part 11. Subsection (B)(3) of section 16-476 of the City Code is hereby amended by adding the following subsection and reordering the subsections alphabetically:

"(d) Mobile food facilities in accordance with section 16-442;"

Part 12. Subsection (B)(4) of section 16-476 of the City Code is hereby amended by adding the following subsection and reordering the subsections alphabetically:

"(d) Mobile food facilities in accordance with section 16-442;"

Part 13. Subsection (A) of section 16-477 of the City Code is hereby amended to read as follows:

"(A) A temporary use permit shall be approved at least seven days prior to the commencement of the temporary use. An application for a temporary use permit shall be submitted on an application form secured from the director. The application shall provide the information necessary for review of the application by appropriate city departments, and shall include the name, address, telephone number and signature of both the applicant and property owner, and the project location."

Part 14. Section 16-478 of the City Code is hereby amended to read as follows:

"SEC. 16-478. FEE.

A nonrefundable fee in the amount set by city council resolution shall be paid upon the filing of an application for a temporary use permit. Temporary uses may be subject to additional fees or taxes imposed pursuant to this code or other applicable regulations."

Part 15. Subsection (A)(4) of section 16-479 of the City Code is hereby amended to read as follows:

"(4) Forty-five consecutive days:

(a) Christmas tree lots or Halloween pumpkin sales."

Part 16. Subsection (A)(6) of section 16-479 of the City Code is hereby renumbered subsection (A)(7) and a new subsection (A)(6) is added to read as follows:

"(6) Three hundred sixty five consecutive days:

(a) Mobile food facilities in accordance with section 16-442."

Part 17. Subsections (B) and (C) of section 16-479 of the City Code are hereby amended to read as follows:

"(B) For each time limit category set forth in subsections A(1), A(2) and A(4), no more than three outdoor events shall occur on the same site or at the same facility during a calendar year.

(C) With the exception of mobile food facilities, no new temporary use permit shall be issued within 30 days from the expiration date of a similar temporary use permit for the same site or facility."

Part 18. Subsection (A) of section 16-480 of the City Code is hereby amended to read as follows:

“(A) All uses permitted by a temporary use permit shall be terminated on or before the expiration date stated upon the permit. All materials or products used in connection with or resulting from the temporary use shall be removed within five days after such expiration date. A bond, cash or other acceptable security in the amount specified by City Council resolution to insure removal of all materials, personal property, and structures shall be filed with the director at the time of application for each of the following uses.”

Part 19. Subsection (A)(5) of section 16-480 of the City Code is hereby amended to read as follows:

“(5) Christmas tree lots or Halloween pumpkin sales.”

Part 20. Subsection (A)(6) of section 16-480 of the City Code is hereby added to read as follows:

“(6) Any other temporary use which the Planning Manager determines necessary.”

Part 21. Subsection (C) of section 16-480 of the City Code is hereby amended to read as follows:

(C) Upon the removal by the applicant of all materials associated with the approved temporary use, the applicant shall, within 24 hours after the temporary use permit clean-up date and time, request an inspection by the enforcement division which shall make a recommendation to the director regarding the release or other disposition of the bond, cash or other security deposit.”

Part 22. Section 16-481 of the City Code is hereby amended to read as follows:

“SEC. 16-481. DENIAL OR REVOCATION; APPEAL.

If, in the opinion of the director and other affected city departments, a proposed or ongoing temporary use will be detrimental to the public health, safety and welfare, and the adverse impacts cannot be mitigated, the director shall deny or revoke the permit. The applicant may appeal the director’s decision in writing. The appeal shall state the grounds for appeal and shall be filed with the city clerk, together with the specified appeal fee, within ten days after the date of the director’s decision. Said appeal shall be considered by the Hearing Officer, and the decision of the Hearing Officer shall be final.”

Part 23. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Part 24. Pursuant to Government Code Section 36933(c)(1), the City Attorney was designated to prepare, and the City Clerk published, a summary of this ordinance, and a certified copy of the ordinance was posted in the Office of the City Clerk a minimum of five days before the City Council’s adoption of the ordinance.

Part 25. The City Clerk shall certify as to the adoption of this ordinance and shall cause the summary thereof to be published within fifteen calendar (15) days of the adoption and shall post a certified copy of this ordinance, including the vote for and against the same, in the office of the City Clerk, in accordance with Government Code Section 36933. Ordinance No. \_\_\_\_ was first read on \_\_\_\_\_, 2012, and finally adopted on \_\_\_\_\_, 2012, to become effective thirty days thereafter.

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

  
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Alan Holmberg, City Attorney