



**DATE:** January 20, 2015

**CATEGORY:** Unfinished Business

**DEPT.:** City Attorney's Office

**TITLE:** **Mobile Vending and Food Establishment Ordinance Update and Amendments**

### **RECOMMENDATION**

Introduce an Ordinance Amending Chapter 15 of the Mountain View City Code Relating to Food Establishments, Restaurants, and Mobile Vendors, to be read in title only, further reading waived, and set a second reading for February 10, 2015 (Attachment 1 to the Council report).

### **BACKGROUND**

On June 11, 2013, the City adopted an ordinance amending Chapter 15 of the Mountain View City Code related to food establishments, restaurants, and mobile vendors. Amongst other amendments, the ordinance revisions included streamlining the permitting process for all mobile vendors, whether operating on public or private property; and allowing for mobile vending special events with a Temporary Use Permit (TUP). City Council directed staff to return after one year with an update on the implementation of the ordinance. When the ordinance was introduced, a topic of discussion included whether to allow for late-night operational hours on Friday and Saturday. However, the existing operational hours of 7:00 a.m. to 10:00 p.m. were not changed.

### **ANALYSIS**

#### **Permits Issued**

The updated 2013 ordinance intended to simplify the permitting process, allowing vendors to easily obtain a permit to operate on public or private property. Since the adoption of the Code, 52 new permits were issued to mobile vendors. For the 2015 calendar year, the City has issued 50 permits and 23 permits are pending renewal. The number of new permits indicates the interest in the program, and Code Enforcement staff has received positive feedback on the new process and permit requirements from

vendors. If the strong interest in the program continues, revisions to the permit fees may be appropriate to recover the cost of staff time to administer the program.

Mobile vending special events are now allowed on private property through a TUP, which would authorize a use for up to one year. An event on a street or sidewalk that includes mobile vendors would be subject to the City's Special Events Policy (K-14) or could be held as part of a City-sponsored or City-approved event.

To date, no TUPs have been issued for a mobile vending special event. Although "Off the Grid," an organizer of mobile food vending events, expressed interest in a mobile food vending special event, an agreement could not be reached regarding the duration of the TUP. City staff had traffic, parking, and litter concerns at the location of interest, and therefore, a TUP with a six-month duration was recommended to provide an opportunity to evaluate these concerns. Off the Grid was not amenable to this duration.

### Complaints and Violations

Code Enforcement staff receives between 25 and 30 complaints a year regarding mobile vendors, with the majority of the complaints in the warmer months. The Police Department has not received any complaints to date. The majority of the complaints are from owners or managers of local brick-and-mortar restaurants or stores because a mobile vendor is vending nearby. Once the owners and managers were informed about the regulations and discovered the majority of the vendors were operating legally, their complaints were resolved. Complaining parties frequently indicated vendors are also operating past 10:00 p.m. In addition, though less frequent, vendors who operate legally within the allowed operational hours also complain about vendors operating past 10:00 p.m. No additional complaints, such as noise or trash concerns, were reported. Upon investigation of the complaints, the two recurring violations of the ordinance are:

1. Vending without the required permit.
2. Vending after 10:00 p.m.

Prior to the revised ordinance, vending without a required permit was also a common violation. These violations were not corrected with voluntary compliance. Under the revised ordinance, Code Enforcement staff continues to make personal contact with a vendor operating without the required permit and has had 100 percent success in obtaining voluntary compliance without issuing a Notice of Violation. Code Enforcement staff has not issued any notices to vendors for operating without a permit because every vendor, with one exception, has obtained a permit after the initial

contact. The one vendor who did not obtain a City permit was ineligible to obtain a permit due to the lack of the required County Health Permit. This vendor no longer operates in Mountain View.

Vending after 10:00 p.m. has become more of an issue within the past year and a half. These violations occur throughout the week and take place on private property. Code Enforcement staff has made direct contact with the vendors numerous times and has not received voluntary compliance. Code Enforcement staff has issued several Notices of Violation for vending after hours and provided each vendor an additional copy of the rules and regulations they were provided when they obtained their City permits. Code Enforcement staff will continue to work with vendors who are operating outside the allowed operational hours.

The City has received a couple of comments/questions from downtown businesses regarding mobile vendor parking in the downtown area. Currently, the City Code prohibits mobile vendor operation on or along any public streets or sidewalks on Castro Street between California Street and Evelyn Avenue, on Dana Street between Bryant Street and Hope Street, and on Villa Street between Bryant Street and Hope Street. City staff has reached out to the Central Business Association to clarify the mobile vending areas in the downtown area to try to help alleviate confusion.

### Operational Hours

As discussed above, vending after 10:00 p.m. is an ongoing issue. The City has received complaints about vending after hours and requests from vendors to extend the operational hours to allow late-night vending. Vendors have expressed their desire to extend the late-night hours until 12:00 midnight and as late as 2:30 a.m. If Council would like to allow late-night hours, given the requests from vendors for later hours and the lack of any complaints of noise, litter, or other concerns for those operating after 10:00 p.m., staff would recommend allowing mobile vending after hours pursuant to an issued TUP. This would allow mobile vendors the option to operate during later hours and provide Planning, the Police Department, and other departments an opportunity to review the suitability of location and any safety issues.

Approval of a TUP requires the following findings: the establishment or operation of the use will not be detrimental to the health, safety, or general welfare of persons residing or working near the proposed use; the use will not be significantly detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community; and development standards that apply to the category of use are generally met, taking into consideration the short time period of the proposed use. In addition to the required TUP findings, considerations in issuing a TUP for mobile

vending after hours would include review for noise, traffic, parking, and litter concerns; compliance with local, County, and State regulations; and any open Code Enforcement cases. The conditions of approval for a permitted temporary use would also address other concerns of reviewing departments.

If the Council would like to extend the operational hours, optional language is included in Attachment 2 to allow for after-hours vending pursuant to a TUP.

### Other Proposed Revisions

The proposed ordinance includes revisions to address several cleanup items. The proposed ordinance attached is in strike-out version, with added items underlined and deleted items struck through. These items include revisions to the Zoning Code references to reflect recent updates and the reorganization of the Zoning Code. In addition, the word “primary” in reference to the location distance requirement of vendors from school facilities has been deleted because it was inadvertently included in the ordinance adopted in 2013 and was not intended to change those facilities where vendors are not permitted to vend within 100’ of the school. As a result, it is proposed to read “Mobile vendors shall be ... at least one hundred (100) feet away from any school facility, including playgrounds.” Furthermore, language was added to clarify the storage location of a vehicle or mobile unit identified on the City’s application must match the identified and permitted location by the County for all mobile food vendors.

The proposed ordinance amends the definition of “mobile vendor” to clarify that catering services that do not sell or offer for sale goods, wares, food, or other things of value from their person, vehicle, or other mobile unit, are not subject to the mobile vending ordinance. In other words, if there is no individual transaction between the vendor and customer, the mobile vending ordinance does not apply. Catering services that do not meet this definition are subject to Article I of Chapter 15.

In an effort to provide greater flexibility when the revision of insurance requirements is necessary, the proposed ordinance removes the specific insurance amounts required and provides the insurance to be approved by the City Manager or designee for Commercial General Liability and Automobile Liability insurance. The insurance amounts required will continue to be set forth in a readily available FAQ sheet, which is available on the City’s website. The proposed ordinance also adds a requirement that a mobile vendor without Workers’ Compensation insurance attest to the fact that Workers’ Compensation insurance is not required under State law and that they will notify the City should employees be hired or they become subject to Workers’ Compensation insurance requirements. This requirement helps ensure mobile vendors operating in the City are operating lawfully under the Workers’ Compensation laws.

The City's mobile vending application will be revised to include a statement to this effect, which applicants will sign and acknowledge if they do not provide proof of Workers' Compensation insurance.

The proposed ordinance adds a general operating requirement that all mobile vendors must comply with other local, State, and Federal law. The requirement that a Social Security number be provided on the application has been removed, as this information is not needed for issuance of a mobile vending permit or code enforcement.

In addition, the Santa Clara County Department of Environmental Health (County) requested the City Code provisions regarding food establishments include language authorizing the County, as the City's designated health officer, to adopt and enforce food regulations in the City of Mountain View. The County has adopted an ordinance for a placarding/scoring system for all food establishments. The County seeks to ensure these new regulations apply to food establishments in the City of Mountain View for sanitation purposes. Although the County currently has this authority under our City Code, staff believes this authority could be made clearer and has amended Section 15.6 of the City Code accordingly in the proposed ordinance.

**FISCAL IMPACT** – None.

### **ALTERNATIVES**

1. Introduce the proposed ordinance and include the optional language included in Attachment 2 relating to after-hours operation.
2. Revise the proposed ordinance to address other aspects of mobile vending as directed by Council.
3. Provide other direction to staff.

**PUBLIC NOTICING**

Agenda posting. Notification was also provided to the Chamber of Commerce, Central Business Association, mobile vendors with City of Mountain View permits, and other interested parties.

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CC-NCW/3/CAM  
012-01-20-15CR

- Attachments: 1. Proposed Ordinance (Strike-Out Version)  
2. Optional Mobile Vending After-Hours Provision