



City of San Leandro

Meeting Date: June 16, 2014

Ordinance

File Number: 14-211

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.C.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE Adding Title 4, Chapter 4-34 of the San Leandro Municipal Code Relating to Mobile Food Vending (regulates mobile food vending)

The City Council of the City of San Leandro does ORDAIN as follows:

SECTION 1. That a Chapter 4-34 of Article 4, entitled "Mobile Food Vending", is hereby added to the City of San Leandro Municipal Code, and shall, in its entirety, read as follows:

Findings.

The City Council for the City of San Leandro finds that:

1. California Vehicle Code section 22455 allows municipalities to regulate mobile food vending in order to protect public safety; and
2. Mobile food vending has the potential to pose dangers to the public health and welfare of residents of the City of San Leandro, including specific negative impacts on public safety, pedestrian and vehicular circulation and traffic. The City of San Leandro has a substantial public interest to provide regulations regarding the vending from vehicles that prevent health and safety hazards and preserve the public health, safety, and welfare related to such activities, especially for residents and visitors to the City of San Leandro; and
3. The primary purpose of the City's public streets and rights-of-way is to facilitate the free passage of vehicles, bicycles and pedestrians; and
4. The City of San Leandro intends to regulate mobile food vending in a manner that protects the public health, safety, and welfare, while also accommodating mobile food vending activity that promotes unique businesses and an active and social pedestrian environment. However, the unregulated use of the public streets and rights-of-way by mobile food vendors makes public streets and rights-of-way unsafe for vehicles, bicycles and pedestrians. Therefore, the operations of mobile food vendors in City rights-of-way should

be regulated; and

5. To protect the public health and safety, minimum separation distances between different mobile food vendors and specified land uses that have a high concentration of vehicular, pedestrian and commercial activity around and within the areas of such land uses and the adjacent public rights-of-way are necessary and in the public interest; and
6. Mobile food vending units should be subject to minimum separation distances from active full service restaurants, cafes, delicatessens, fast food establishments and community events because of the following characteristics of such land uses: High pedestrian and vehicular activity in and around restaurant land uses and restaurant parking lots; high concentrations of restaurant uses that service patrons during similar periods of time that do not exist at other commercial enterprises during the same periods of time, with limited on-street and off-street parking for the same uses; view obstacles to vehicular and pedestrian traffic flow caused by larger vehicles, such as mobile food vending units; limited parking requirements that facilitate safe vehicle and pedestrian traffic in and around mobile food vending units and restaurant land uses; limited on-street parking spaces around restaurant land uses, especially for larger vehicles such as mobile food vending units; and
7. Mobile food vending units are subject to minimum separation distances from schools because of the following characteristics: Mobile food vending units attract children to venture off school campuses, which poses a safety hazard related to unsupervised children running across streets and rights-of-way to a mobile food vending unit; mobile food vending units add to already existing congestion and traffic hazards around school zones particularly during the beginning and end of the school day; and
8. Subject to appropriate standards for the public safety, health and welfare, mobile food vending promotes the public interest by providing a needed service to locations in the City underserved by restaurant land uses, activating underutilized spaces, especially in the City's industrial areas, complementing private and public properties, promoting unique business opportunities and activities to residents and visitors, promoting arts and cultural exchange through the culinary arts, and promoting an attractive street environment.

CHAPTER 4-34 MOBILE FOOD VENDING

4-34-100 Definitions

(a) "Mobile food vendor" shall mean a person who sells, serves or offers for sale cooked or cold, prepackaged or prepared food for human consumption from a mobile food vending unit(s) parked or located on private property, public property or within the public right of way, including but not limited to streets and roads. A mobile food vendor may own and operate more than one mobile food vending unit. Mobile ice cream vendors shall be considered mobile food vendors except where otherwise stated and shall have additional requirements as specified pursuant to Section 4-34-500 of this Chapter.

(b) "Mobile food vending unit" or "food truck" shall mean any motorized or trailer vehicle, designed to be portable and not permanently attached to the ground from which only food and beverages are sold, served free or sampled, displayed or offered for sale. Ice cream trucks

shall be considered mobile food vending units except where otherwise stated and shall have additional requirements as specified pursuant to Section 4-34-500 of this Chapter.

(c) "Mobile ice cream vendor" shall mean any person engaged in the mobile food vending of frozen or refrigerated desserts, confections or novelties commonly known as ice cream, prepackaged candies, prepackaged snack foods or soft drinks.

(d) "Ice cream truck" shall mean any motor vehicle, or trailer attached to a motorized vehicle engaged in the curbside vending or sale of frozen or refrigerated desserts, confections, or novelties commonly known as ice cream, or prepackaged candies, prepackaged snack foods, or soft drinks.

(e) "Pushcart" shall mean a piece of vending equipment which is intended to store all materials and merchandise related to vending activity, and is easily moved by a person.

(f) "Trailer" shall mean any non-motorized vehicle which is attached to a motorized vehicle.

(g) "Handcart" shall mean a cart drawn or pushed by hand.

(h) "Dolly" shall mean a platform on a roller or on wheels or coasters used to move objects.

4-34-150 Applicability and Exemptions

(a) Deliveries. This Chapter does not apply to any person engaged in delivering previously ordered food from or to any store including grocery stores, fixed place of business or residence.

(b) Community Events and Other Entitlements. Any mobile food vendor included in an event that is sponsored by the City or which has been authorized by the City through a special event, temporary use or outdoor facilities permit pursuant to the San Leandro Zoning Code, lease, agreement, or other entitlements issued by the City, may be subject to additional requirements pursuant to the terms or conditions of such authorization. A business license, current and valid general commercial and automobile liability insurance coverage, and an Alameda County Environmental Health Department Permit are required for each mobile food vending unit.

(c) Public, Private Property and Right of Way. This Chapter shall apply to mobile food vendors and mobile food vending units operating on public property, private property and in the public right-of-way unless otherwise permitted in Section 4-34-150(b) above.

4-34-200 Prohibitions

(a) No person shall vend food from or locate a pushcart, handcart or dolly within the City of San Leandro.

(b) No person shall sell, serve, or offer for sale cooked or cold, prepackaged or prepared food for human consumption from motorized or non-motorized vehicles other than those permitted by the Alameda County Environmental Health Department, California Health and Safety Code Section 114381 and in compliance with this Chapter.

(c) Mobile food vendors shall not conduct business operations on privately owned property within single-family zoning districts or developments unless otherwise permitted pursuant to this Chapter.

(d) No permit issued by the City for the purpose of mobile food vending may be transferred or assigned to another mobile food vendor or mobile vending unit.

4-34-250 Mobile Food Vending Permit Required; Application Requirements

(a) It shall be unlawful for any person to engage in the business of mobile food vending within the City of San Leandro without first obtaining a permit therefore as provided herein.

(b) All new and existing mobile food vendors shall obtain a Mobile Food Vending Permit for operation at any location within the City of San Leandro. A Mobile Food Vending Permit is required for each mobile food vending unit. All applicants must execute an application in writing on a form furnished by the Director of Finance. In order to obtain a Mobile Food Vending Permit, mobile food vendors must provide the following:

- (1) Proof of a valid Alameda County Environmental Health Department Permit.
- (2) A route map or written description showing the proposed route(s) and location(s) for each mobile food vending unit, which shall be updated annually at the time of business license renewal. Route and location changes before the annual business license renewal must be submitted by a mobile food vendor, which shall become an addendum to the original permit.
- (3) A copy of the mobile food vendor's valid California driver's license as well as a valid California driver's license for any person that will operate the mobile food vending unit.
- (4) Where applicable, a valid California Department of Motor Vehicles registration certificate.
- (5) Proof of the following insurance requirements maintained during the term of the permit.
 - (i) General Liability Insurance. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
 - (ii) Automobile Liability: \$1,000,000 combined single limit per accident.
 - (iii) Indemnification and Hold Harmless. Mobile food vendors shall be responsible for all liability for personal injury or property damage which may result from their activities under the permit, or proximately caused by failure on their part to perform obligations under said permit. If any claim or such liability is made against the City, its officers, or employees, the mobile food vendor shall indemnify, defend and hold them and each of them harmless from any loss, liability, damage, claims, expenses or cost sustained by any person or property including any claim based on the active or passive negligence of the City, its officers, volunteers or employees, insofar as permitted by law.
 - (iv) The certificates of insurance, the endorsement naming the City as an

additional insured, and the coverage amounts must be verified by the Finance Department before the issuance of a Mobile Food Vending Permit.

(6) Any supplementary information requested by the City Manager or his designee as reasonably necessary to determine whether to approve or deny the Mobile Food Vending Permit application.

(7) Mobile food vendors and mobile ice cream vendors shall pay the prescribed Mobile Food Vending Permit fee approved by the City Council.

4-34-300 Operational Standards for Private, Public Property and Right of Way

(a) Each mobile food vending unit shall display a current business license and Alameda County Health Department permit in plain view of customers and any licensing agencies.

(b) Each mobile food vending unit shall maintain a valid Alameda County Health Department permit at all times. If the health permit expires, or is suspended or revoked, then all food sales shall cease until the health permit is reinstated.

(c) Mobile food vending units shall meet all state and federal requirements, including any related to licensing and registration.

(d) Mobile food vending units shall be entirely self-sufficient in regards to gas, electricity, water, and telecommunications, unless exceptions are granted pursuant to appropriate permits approved by City departments, including but not limited to, the Building and Safety Services Division and the Fire Department.

(e) Mobile food vending units shall be maintained in movable condition at all times.

(f) Mobile food vendors shall comply with the following:

(1) Have at least one clearly designated waste container within two (2) feet of the mobile vending unit while also maintaining a minimum four (4) foot clearance on sidewalks for pedestrian accessibility.

(2) No mobile food vendor shall throw, deposit, discharge, leave or permit to be thrown, deposited, discharged, or left, any fat, oil, grease, refuse, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, gutter, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private lot or land in the City. Mobile food vendors shall not dispose or allow the disposal of any generated waste, without written approval, in any public or private waste container other than the waste container under the control of the mobile food vendor.

(g) No part of the vehicle, furniture, or other equipment related to the vending operation may encroach onto the public sidewalk. Mobile food vendors are responsible for managing customer queuing, and ensuring pedestrian accessibility is maintained.

(h) Mobile food vendors shall not engage in alcohol sales or service unless permitted by the

California Department of Alcoholic Beverage Control.

(i) All mobile food vendors, mobile food vending units and anyone acting or working on his or her behalf shall comply with Section 4-1-1100 Noise Ordinance of this Code. Any exception shall be provided in accordance with Section 4-1-1120 Noise Ordinance Exemptions of this Code.

4-34-350 Additional Operational Standards for Private Property

(a) Property Owner Written Permission Required. Mobile food vendors shall have in their possession at all times the property owner's written permission to operate on the property. The written authorization shall describe the approved location and operation schedule.

(b) Access. Vendors shall not occupy any paved area required for loading, circulation or fire access.

(c) Furniture. Tables, chairs and shade structures may be allowed in conjunction with mobile food vending units if they occupy excess parking spaces or areas not required for loading, circulation or fire access, and are removed daily after use. Tables and chairs may be on turf or mulched areas provided that precautions are taken or improvements are installed to protect and maintain landscaped areas.

(d) Capacity. Up to three mobile food vending units may be on one parcel of property at a time as long as each individual mobile food vending unit is in compliance with the requirements of this Code. Additional mobile food vending units may be permitted through a City approved or sponsored special event, temporary use or outdoor facilities permit issued pursuant to the San Leandro Zoning Code provided that each individual mobile food vending unit complies with the requirements of this Code.

4-34-400 Hours of Operation

Mobile food vending on private property, City-owned property or rights-of-way shall not be conducted before seven (7) a.m. or after ten (10) p.m. unless otherwise permitted by a temporary use permit, outdoor facilities permit, or special event permit approved by the City, or other zoning entitlement or right.

4-34-450 Permitted Locations and Separations

Mobile food vending units shall operate in the zoning districts that permit such business activity pursuant to Part II of the Zoning Code and shall comply with the following restrictions:

(a) Mobile food vendors do not have any exclusive right to any location in the public streets, nor shall they be permitted a stationary location, unless otherwise provided, or be permitted to operate in any congested area where their operations might impede or inconvenience the public.

(b) Mobile food vending units shall not be located within any required vision triangles or within fifteen (15) feet of any curb return or driveway.

(c) In the right of way, mobile food vending units shall not park for more than five (5) hours in any particular location, nor shall any mobile food vending unit park in violation of any section of the San Leandro Municipal Code.

(d) Regardless of the length of time parked in the right of way, no mobile food vending unit shall park within five hundred (500) feet, as measured in any direction, of any area where it was previously parked at the beginning of the five (5) hour period, within any eighteen (18) hour period.

(e) Mobile food vending units shall be separated from the following land uses or activities:

(1) Three hundred (300) feet from the property line of any active full service restaurant, cafe, delicatessen or fast food (large and small) establishment.

(2) Three hundred (300) feet from any community event or other entitlement, authorized pursuant to Section 4-34-150(b), during the hours of the community event or other entitlement operation.

(3) Five hundred (500) feet from the property line of a primary or secondary school during school hours, and one-half (1/2) hour prior to the start of the school day and one-half (1/2) hour after the end of the school day.

(4) Notwithstanding the separations above, a mobile food vending unit may operate closer to the land uses or business activities specified in this subsection if the mobile food vendor obtains written consent from each applicable restaurant owner, public or private school, community event or entitlement holder indicating that he or she has no objections to the proposed mobile food vending unit operating within the minimum separation. The City may overrule such written consents if the City finds in writing that the close proximity of the mobile food vending unit(s) creates overriding adverse impacts on parking and traffic circulation within the applicable minimum distance separations.

(f) The separation shall be measured from the nearest point of the mobile food vending unit to the nearest point of the subject land use.

4-34-500 Mobile Ice Cream Vendor Supplemental Requirements

(a) Mobile ice cream vendors shall comply with the provisions of this Chapter and the following supplemental requirements. If there is a conflict between any other regulations applying to a mobile food vending unit, the requirements in this Article shall take precedence to the requirements applicable to mobile ice cream vendors or trucks:

(1) The fingerprints of the mobile ice cream vendor and any employees shall be provided in the initial application for a Mobile Food Vending Permit, for renewals, and every even numbered year thereafter;

(2) A statement shall be provided in the initial application for a Mobile Food Vending Permit, for renewals, and every even numbered year thereafter, as to whether or not

the mobile ice cream vendor or any employees have been convicted of any crime, including a violation of any municipal ordinance, the nature of the offense, and the punishment or penalty imposed; and

(3) No mobile ice cream vendor shall dispense any item from an ice cream truck parked or stopped within five hundred (500) feet of the property line of a primary or secondary school anytime during school hours, one-half (1/2) hour prior to the start of the school day and one-half (1/2) hour after the end of the school day.

(4) A Mobile Food Vending Permit may be denied or revoked if the mobile ice cream vendor or any employees have been convicted of any offense involving conduct which requires registration pursuant to Section 290 of the California Penal Code (the California Sex Offender Registration Act) or convicted of an offense outside the State of California that would have required registration pursuant to the California Sex Offender Registration Act if committed within the State of California.

4-34-550 Inspections

(a) Mobile food vendors and their respective employees shall provide licensing and inspection agencies with a copy of a valid San Leandro Mobile Food Vending permit/business license and Alameda County Environmental Health Department permit upon request. Mobile food vendors shall allow representatives of the City to enter and inspect their mobile food vending units any time the mobile food vending unit is operating within the City for the purpose of verifying compliance with this Code.

4-34-600 Suspension, Revocation, Appeals and Procedure

(a) Any Mobile Food Vending Permit may be suspended by the City Manager, or his or her designee, for any of the following reasons:

(1) False or misleading information supplied by the mobile food vendor upon which the Mobile Food Vending Permit was issued.

(2) A finding that the issuance of the Mobile Food Vending Permit or continued operation under the Mobile Food Vending Permit presents a threat to public health or safety.

(b) The process and procedures for revocation of Mobile Food Vending Permits issued pursuant to this Chapter, and appeals of Mobile Food Vending Permits that are revoked, shall follow the same procedures as set forth in Article 4 of Chapter 2-2 of this Code.

4-34-650 Violation and Enforcement

(a) Removal and Relocation. The City Manager, or his or her designee, may order the removal or relocation of a mobile food vending unit on public property, private property or rights-of-way whenever it appears that the activities are having an adverse impact on the use of the property, neighboring properties or roadways, including blocking the view of a business frontage or main entrance to the business from a roadway, traffic, circulation, parking availability, noise, trash, or other reasons related to public health or safety.

(b) Violations. Any mobile food vending unit that is located, operated, or maintained in a manner that impedes vehicular and pedestrian circulation or that creates a hazard to life or property, or any condition or act in violation of this Chapter or any provision of applicable state or federal law, is expressly deemed and declared to be a public nuisance, and such violation may be abated by any duly authorized police officer of the City of San Leandro in any of the following manners:

(1) Citations - Violations: Pursuant to Chapter 1-12 of this Code.

(2) Authority to Tow: Removing or causing removal of any mobile food vending unit from any street within the City of San Leandro when such mobile food vending unit is operating in violation of this Chapter. The vehicle shall be removed to a tow yard.

(i) Payment of Charges: The owner or person having the right to possession of any mobile food vending unit removed pursuant to this Chapter shall pay all such removal, towing and storage charges before he, or she shall be entitled to regain possession of such vehicle.

(ii) Food Spoilage and Property Loss: The City shall not be responsible for food spoilage or property loss that results from the removal, towing and storage of a mobile food vending unit pursuant to this Chapter.

(3) Suspension: Any Mobile Food Vending Permit issued under this Chapter may be suspended pending hearing and for a period not exceeding ten (10) days whenever any duly authorized police officer of the City of San Leandro has issued a notice of hearing for revocation of permit. Any such suspension shall terminate upon its expiration date or upon the rendering of a decision on the question of revocation, whichever shall occur first. No mobile food vending unit shall operate in the City of San Leandro under a Mobile Food Vending Permit during the time the permit is suspended pending the hearing.

(4) Violations may also result in revocation of applicant's business license pursuant to Section 2-2-440 of this Code.

SECTION 2. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 3. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to

adoption.

Introduced by Councilmember Prola on this 2nd day of June, 2014, and passed to print by the following called vote:

Members of the Council:

AYES:	Councilmembers Cutter, Gregory, Lee, Prola, Souza; Mayor Cassidy	(6)
NOES:	None	(0)
ABSENT:	Councilmember Reed	(1)