



# CITY COUNCIL AGENDA STATEMENT



July 24, 2018

File ID: ~~18-0221~~  
18-0332

## **TITLE**

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE CHAPTER 19.58 (USES) TO ADD SECTION 19.58.440 (MOBILE FOOD FACILITIES), AMENDING CHAPTER 8.20 (FOOD VENDORS), AMENDING CHAPTER 5.62 (VENDING VEHICLES), AMENDING CHAPTER 10.52 (STOPPING, STANDING, AND PARKING), AND AMENDING CHAPTER 5.07 (MASTER TAX SCHEDULE) (SECOND READING AND ADOPTION)

## **RECOMMENDED ACTION**

Council adopt the ordinance.

## **SUMMARY**

The City is experiencing a surge of mobile food facilities that operate on public and private property with limited regulatory standards. To facilitate mobile food facility commerce, the City needs to protect the public by ensuring these facilities operate in a safe manner and do not create a nuisance or hazard. Staff is proposing amendments to the Chula Vista Municipal Code (CVMC), by adding a new Mobile Food Facility Ordinance to Chapter 19.58 (Uses) and amending Chapters 8.20, 5.62, and 10.52 regarding food vending, and vending vehicles, and stopping/parking respectively. In addition, staff is proposing to amend CVMC Title 5 to clarify continued applicability of the existing business license tax for mobile food facilities and amend the Master Fee Schedule to establish Mobile Food Facility permit fees.

## **ENVIRONMENTAL REVIEW**

The Project is a legislative activity that qualifies for a Categorical Exemption pursuant to the California Environmental Quality Act State Guidelines Section 15061(b)(3).

### **Environmental Determination**

The City Council finds that the adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Therefore, pursuant to Section 15060(c)(3) of the CEQA Guidelines, the action is not subject to CEQA; therefore, no further environmental review is required.

The City Council reviewed the proposed legislative action for compliance with the California Environmental Quality Act (CEQA) and determined that the action is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the action is not subject to CEQA.

## **BOARD/COMMISSION/COMMITTEE RECOMMENDATION**

On February 28, 2018 the Planning Commission recommended adoption of the ordinance to City Council (Attachments 1 and 2). The proposed ordinance that the Planning Commission recommended included omissions of sections in Chapter 8.20 regarding vending vehicles; however, staff reviewed the omissions and determined that most should remain, as they are defined and operate different from mobile food facilities. The retention of the sections does not affect the purpose and intent of the Mobile Food Facility Ordinance. The San Diego County Airport Land Use Commission reviewed the ordinance and determined that it is consistent with Airport Land Use Compatibility Plan (APLUCP) (Attachment 3).

## **DISCUSSION**

### CVMC Section 19.58.440 (Mobile Food Facilities):

The City's zoning code provides a regulatory process for pushcarts on private property and in the public right-of-way, but currently does not regulate mobile food facility vending on public or private property. The proposed ordinance will create a new section; CVMC Section 19.58.440, to address these uses on public and private property. The proposed code amendments are intended to differentiate between the City's mobile food/beverage vending regulations that limit the sale or distribution of merchandise, and services from vehicles which dispense freshly prepared and pre-packaged food and beverages (e.g. ice cream trucks), and mobile food facilities by creating new zoning regulations and processes for permit approval for mobile food facility activity in the City.

Reasonable regulations are necessary to ensure that mobile food facilities operate in accordance with health, safety and traffic laws of the state and the City of Chula Vista's parking requirements; do not cause public safety problems by contributing to traffic congestion or by creating pedestrian and vehicular conflicts; and do not disturb the quiet use and peaceful enjoyment of residential neighborhoods. Therefore, the regulations described in the attached ordinance are in accordance with the authority granted in Section 22455 of the California Vehicle Code, which allows the driver of any commercial vehicle engaged in vending upon a street to vend products on a street in a residential zone and lawfully parking adjacent to the curb.

A local authority may also adopt additional requirements for public safety by regulating the type of vending and the time, place, and manner of vending from vehicles upon any street. Additionally, California Health and Safety Code section 114315 allows a mobile food facility to operate within 200 feet of an approved and readily available toilet, and handwashing facility to ensure that restroom facilities are available to facility employees when the mobile food facility conducts business for more than a one-hour period.

These amendments will require mobile food facilities to obtain a Vending Permit through a ministerial process that includes securing a business license, as required in CVMC Section 5.62, obtain permission from a property owner, and possess a County health permit among other requirements. These amendments will also require a property owner who would like to host mobile food facilities on their premises, to obtain a Hosting Permit. Mobile food facilities that vend in the public right-of-way are governed by the California Vehicle Code and by new CVMC Section 19.58.440 that regulates the time, place, and manner to protect public health and safety. Listed below are key features of the new ordinance:

- Requires annual Vending and Hosting permits for mobile food facilities; and
- Requires a valid commissary agreement; and
- Requires a valid County Health permit; and
- Limits the amount of outside furniture; and
- Requires a valid business license; and
- Requires compliance with performance standards; and
- Prohibits mobile food facilities on vacant lots or gas service stations; and
- Requires property owner permission; and

- Requires that mobile food facilities be an accessory use to a primary use on-site; and
- Requires a waste receptacle; and
- Requires a restroom facility for vending employees

Permit process:

Mobile food facility vendors would be required to obtain a Vending Permit, and a City of Chula Vista business license. Property owners who host a mobile food facility would be required to obtain a Hosting Permit to allow a mobile food facility to operate on their property. Hosting Permits would not be required for public special events, private event catering, active construction sites, or institutions such as schools, religious facilities, colleges or hospitals. The application packet submittal requirements would include: the application form; site plan (Hosting Permit only); proof of a County Health permit (Vending Permit only); proof of a commissary agreement (Vending Permit only), Indemnification Agreement (Attachment 4), and a fee. Vending and Hosting permits would be processed by Development Services as a ministerial action and expire annually.

Permit Fees:

As proposed, Resolution B amends Chapter 14 (Planning Fees) of the City’s Master Fee Schedule to establish annual Mobile Food Facility Vending and Hosting permit fees. The estimated reasonable cost of providing the associated services has been calculated using the most recent Development Services Fee Study hourly rates and is summarized in the table below (see Attachment 5 for Cost of Service Analysis). Annual fees of \$135 and \$250, are recommended for Vending and Hosting permits, respectively (Attachment 6).

	Total Staff Time	Estimated Cost of Service	Proposed Fee
Vending Permit	0.75 Hours	\$137.27	\$135.00
Host Permit	1.25 Hours	\$253.58	\$250.00

Enforcement:

While enforcement of mobile food facility regulations is expected to be more challenging than typical enforcement for violations at fixed locations; violators will be subject to enforcement action by the Code Enforcement Division; the Police Department; the County of San Diego, for health permit violations; and potentially be subject to fines and permit revocation procedures. Mobile food facility vendors are required to park, and service their vehicles at the commissary location in the agreement that is submitted with the vending permit application.

CVMC Chapter 5.62

Chapter 5.62 of the CVMC currently addresses vending vehicles used to sell, give away, or display any goods other than foodstuffs. The proposed amendments to Chapter 5.62 clarify the applicability of this Chapter to only vendors of non-food goods (does not apply to mobile food facilities or vendors of prepackaged food goods).

CVMC Chapter 8.20

Chapter 8.20 of the CVMC currently addresses vending vehicles that sell, give away, display, or offer for sale both prepared (e.g. catering trucks, bakery trucks, or ice cream trucks) and unprepared (e.g. raw or unprepared fruits, vegetables, produce, meats, fish, poultry, or seafood) foodstuffs. Historically, the City has primarily permitted vending vehicles, as defined in Chapter 8.20. The new CVMC Section 19.58.440 addresses mobile food facilities, which are differentiated from vending vehicles, by including a definition for these facilities in Chapter 8.20. The proposed amendment adds CVMC Section 8.20.015 to establish that a mobile food facility is not a vending vehicle for purposes of Chapter 8.20.

### CVMC Section 10.52.200

The proposal also includes an amendment to CVMC Section 10.52.200 to establish that a mobile food facility is not subject to time limit provision of this section as defined in the added Section 19.58.440.

### CVMC Section 5.07.030

The proposed ordinance amends CVMC Section 5.07.030 (Master Tax Schedule) to add references to the newly created CVMC Section 19.58.440 and mobile food facilities. This action does not establish a new tax, but instead clarifies continued applicability of the existing tax to all food vending vehicles (whether permitted under Section 8.20.020 or 19.58.440).

### Public Outreach:

Staff presented the Mobile Food Facility Ordinance to the Third Avenue Village Association (TAVA) Board of Directors and received their support for mobile food facilities to vend on private property and at special events. At TAVA's request, staff held a public workshop on November 7, 2017 and received input from business owners along Third Avenue. The ordinance was heard by the Planning Commission following the workshop on November 8th, but decided to continue the hearing and requested that staff hold an additional workshop to get more input from the public.

On January 31, 2018 staff held a second citywide publically noticed workshop to explain and clarify the purpose and intent of the proposed ordinance. Discussion points included the ordinance's background, Vending and Hosting Permit regulations, permitted locations, permitted and unpermitted operation, and enforcement, followed by a question and answer period. The concerns raised included, ordinance enforceability, use of extension cords, and host and vendor accountability; the concerns did not require significant ordinance revisions; however, staff committed to bring the ordinance back after one year for review, and to further consider the use of extension cords.

Staff also worked together with San Diego United Food Truck Association and California Restaurant Association representatives to address their interests and obtain input; both associations support the ordinance. Additionally, staff presented the draft ordinance to the Development Services Citizen Oversight Committee; following discussion and review, the Committee recommended adoption of the ordinance.

The proposed Mobile Food Facility Ordinance, if adopted, will encourage fair, safe, and equitable business practices employed by mobile food vendors and businesses that host food vending activities.

### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

### **LINK TO STRATEGIC GOALS**

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The Mobile Food Facility Ordinance supports the Economic Vitality goal as the ordinance will strengthen the City's economy by supporting and advancing existing businesses and encouraging entrepreneurial opportunities for new small business owners.

### **CURRENT-YEAR FISCAL IMPACT**

All staff costs associated with preparing the Mobile Food Facility Ordinance are included in the adopted budget. Approval of Resolution B supports appropriate cost recovery for providing Vending and Hosting permitting services.

### **ONGOING FISCAL IMPACT**

With approval of Resolution B, costs associated with issuing Vending and Hosting permits will be recovered through the adopted fees. Long term economic impacts are anticipated to be positive but cannot be reasonably projected at this time.

### **ATTACHMENTS**

1. Planning Commission Resolution MPA17-0009
2. Planning Commission Minutes
3. Airport Land Use Commission Letter
4. Indemnification Agreement
5. Cost of Service Analysis
6. Master Fee Schedule (Chapter 14)

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