

ORDINANCE NO. 3513 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMEND MONTEREY CITY CODE SECTION 20-74 PERTAINING TO PEDDLING FOOD FROM THE PUBLIC RIGHT-OF-WAY; AMEND MONTEREY CITY CODE SECTION 32-3 TO BE CONSISTENT WITH MONTEREY CITY CODE SECTION 20-74 PROVIDING THAT SECTION 32-3 DOES NOT REGULATE PUBLIC STREETS

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, California Vehicle Code section 22455 allows municipalities to regulate mobile food vending in order to protect public safety and Article XI, section 7 of the California Constitution extends to municipalities the police power authority to regulate in furtherance of public health and welfare.

WHEREAS, California case law and recent legislative amendments make clear that local government entities may not wholly ban mobile vending from streets or highways, but may impose reasonable regulations to protect public safety.

WHEREAS, modifications to the City's regulations governing mobile food vending are necessary to conform to State law while also responding to the recent state-wide popularity and proliferation of gourmet food trucks.

WHEREAS, the City's Traffic Engineer found Lighthouse Avenue within the City limits to pose significant potential safety hazards for pedestrians that would be exacerbated by the presence of mobile food vendors. Lighthouse Avenue has a high incidence of sideswipe crashes, narrow parking and travel lanes, a high volume of traffic, and moderate speeds. The combination of these conditions generates a high potential for a pedestrian safety issue when a pedestrian walks in the travel lane to avoid sidewalk congestion, which may be caused by the presence of mobile food vendors.

WHEREAS, the City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15305, Class 5) because the project proposes minor alterations to the City Code to allow temporary mobile food vending that does not result in land use or density changes.

Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The proposed mobile food vending is temporary and expected to be primarily conducted on city streets or private property. The environment is not particularly sensitive.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. The proposed ordinance will not result in a cumulative impact as the vending is temporary and vendors are subject to time and space limitations.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The proposed ordinance allows mobile food vending. No significant impact is anticipated as the vending is temporary and vendors are subject to time and space limitations.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). The ordinance does not enable mobile food vending on the City's officially designated state scenic highways.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 20, Article 6, Section 74 is amended to read as follows:

Sec. 20-74 Findings and Purpose.

- (a) The Monterey City Council finds that mobile food vending creates the potential for safety hazards, including:
- (i) Interfering with motorist and pedestrian visibility when parked, due to their height and bulk;
 - (ii) Creating pedestrian conflicts on already congested sidewalks, forcing pedestrians into the street due to the queuing of customers on sidewalks;
 - (iii) Preventing normal turnover of the City's limited on-street parking spaces, resulting in motorists becoming distracted and slowing traffic while looking for parking spaces and driving into residential neighborhoods looking for parking spaces;
 - (iv) Encouraging pedestrians to cross mid-block to purchase food; and
 - (v) Placing equipment and furniture on public sidewalks, creating pedestrian trip and other hazards.
- (b) The Monterey City Council further finds that Lighthouse Avenue has a high incidence of sideswipe crashes, narrow parking and travel lanes, high volume of traffic, and moderate speeds.
- (c) The purpose of this ordinance is to tailor the City's regulations to address mobile food vending vehicles that operate in the City in order to advance the City's substantial public interest in protecting public safety.

Sec. 20-74.1 Definitions.

- (a) As used in this chapter, "beverages" means and refers to a liquid for drinking that does not contain alcohol.
- (b) "Block" means and refers to the segment of a street between adjacent intersections or between an intersection and the terminus of the street or the City boundary.
- (c) "Food" or "foodstuff" means and refers to any substance as defined by Section 113781 of the California Health and Safety Code, defined as a raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part for human consumption, and chewing gum.
- (d) "Mobile food vending" means and refers to the sale, display, solicitation or offer for sale, barter, exchange, gift or otherwise, of food or beverages from any vending vehicle on a public street or highway.

(e) "Vending vehicle" means and refers to any self-propelled, motorized device by which any person or property may be propelled or moved upon a highway, excepting a device moved exclusively by human power, or which may be drawn or towed by a self-propelled, motorized vehicle, from which foodstuffs are sold, displayed, solicited or offered for sale, bartered, exchanged, given or otherwise.

Sec. 20-74.2 Mobile Food Vending Vehicles – Required Permits and Licenses.

(a) It shall be unlawful for any person to maintain, manage or operate any mobile food vending vehicle within the city unless such activity is maintained, managed or operated in strict compliance with all applicable laws, rules, and regulations and with a health permit issued by the Monterey County department of health, if applicable. A separate health permit shall be obtained for each separate vehicle, even when conducted under the same ownership.

(b) It shall be unlawful for any person to maintain, manage or operate any mobile food vending vehicle within the City unless such activity is maintained, managed or operated in strict compliance with a valid business license issued pursuant to Chapter 19 of the City Code. No business licenses shall be issued for any activity described in this article unless such person has first obtained a valid health permit from the Monterey County Health Department, if required.

(c) No person shall maintain, manage or operate any mobile food vending vehicle within the City unless that person first obtains a vendor permit from the City and unless that person first complies with all other provisions of Section 20-74, *et seq.* Any person desiring to maintain, manage or operate a mobile food vending vehicle within the City shall first submit an application for a vendor permit on a form provided by the City, along with all other information required by the City and payment of all applicable fees and charges. No vendor permit shall be issued pursuant to this Section unless such applicant has first obtained a valid City of Monterey business license and a valid health permit from the Monterey County Health Department, if required.

- (i) A separate vendor permit shall be obtained by each vendor and for each separate mobile food vending vehicle, even when conducted under the same ownership.
- (ii) The vendor permit application shall be approved, conditionally approved or denied by the Deputy City Manager, Plans and Public Works, or his/her designee.
- (iii) Any vendor permit issued pursuant to this Section, for any activity regulated by this Section, shall be personal and shall not be assigned, transferred, sold or otherwise conveyed or hypothecated by the person to whom such permit has been issued, to any other person and any such assignment, transfer or conveyance shall immediately render such permit void.

- (iv) The term of each vendor permit, unless sooner terminated, suspended or revoked, shall be for a period of one year. Upon the expiration of such term, and consistent with the other provisions of Section 20-74, *et seq.*, the holder of such vendor permit may renew the vendor permit for additional one-year terms by submitting a new application, together with any fees that may be required, and by complying with all other relevant terms. All vendor permits issued pursuant to this Section shall expire and have no further force and effect upon the date specified in the permit.
- (v) Any vendor permit issued pursuant to this Section must be prominently displayed on the mobile food vending vehicle at any time vending occurs.

Sec. 20-74.3 Mobile Food Vending Vehicles – Regulations.

- (a) No mobile vendor shall display, sell, or exchange any item other than food and/or beverages within the City limits unless authorized by an encroachment permit obtained from the City.
- (b) Permitted hours of operation are from 8:00 a.m. to 8:00 p.m.
- (c) No mobile food vending vehicle shall operate in any City-owned parking lot or garage.
- (d) No mobile food vending vehicle shall operate on Lighthouse Avenue within the limits of the City of Monterey.
- (e) No mobile food vending vehicle shall operate in yellow commercial loading/unloading zones or white passenger zones.
- (f) Vending shall not be permitted directly to persons in other vehicles or from other than the curbside of the vending vehicle.
- (g) Short term operation on public streets. A mobile food vending vehicle on a public street or highway that remains in the same location on a short-term basis shall:
 - (i) Not conduct business or operate on the same block for any longer than allowed by parking restrictions on the block, but in no event for longer than sixty (60) minutes, and shall not within a period of four hours again operate such vehicle within the limits of such block;
 - (ii) Not conduct business or operate within one block of any public or private school grounds on days that school is open between the hours of 8:00 a.m. and 5:00 p.m.;
 - (iii) Not conduct business within one block of any City park at which a City-sponsored special event is taking place without having obtained a special event permit;
 - (iv) Only conduct business from a licensed vehicle or licensed trailer on a public street while parked in a legal parking space;

- (v) At all times operate in compliance with the California Vehicle Code, the Monterey Motor Vehicles and Traffic code and all posted parking, stopping and standing restrictions;
 - (vi) Not encroach on to a public sidewalk with any part of a vehicle, wagon, trailer or truck or any other equipment or furniture related to the operation of the business without a minimum eight foot clearance;
 - (vii) Comply with all applicable food labeling requirements established by the State of California;
 - (viii) Provide garbage and recycling receptacles for immediate use by customers; and
 - (ix) Pick up, remove and dispose of all garbage, and/or materials dispensed from the vending vehicle and any residue deposited on the street from the operation thereof, and otherwise maintain in a clean and debris-free condition the entire area within a 25-foot radius of the location where mobile food vending is occurring.
- (h) Long term operation on public streets. A mobile food vending vehicle that remains in the same location on a public street or highway for longer than sixty (60) minutes shall:
- (i) Obtain an encroachment permit from the City, if available at that location and during the requested hours;
 - (ii) Operate exclusively from the location and for the time periods designated in the encroachment permit, to be established by the City Council;
 - (iii) Comply with all applicable laws and regulations relative to access to bathroom facilities;
 - (iv) Comply with all operating conditions imposed in the encroachment permit;
 - (v) Comply with all applicable food labeling requirements established by the State of California;
 - (vi) Not encroach on to a public sidewalk with any part of a vehicle, wagon, trailer or truck or any other equipment or furniture related to the operation of the business without a minimum eight foot clearance;
 - (vii) Provide garbage and recycling receptacles for immediate use by customers; and
 - (viii) Pick up, remove and dispose of all garbage, refuse or litter consisting of foodstuffs, wrappers, and/or materials dispensed from the vending vehicle and any residue deposited on the street from the operation thereof, and otherwise maintain in a clean and debris-free condition the entire area within a 25-foot radius of the location where mobile food vending is occurring.
- (i) Operation on private property. A mobile food vending vehicle on private property shall:
- (i) Have written documentation of the property owner's authorization to operate on the property in their possession while operating in the City;
 - (ii) Not remain in any single location in excess of two (2) hours in any twenty-four (24) hour period without obtaining a conditional use permit or a temporary use or special event permit as provided in Chapter 38 of this Code;

- (iii) Confine the entire operation on the private property, including queuing of patrons;
- (iv) Comply with all applicable food labeling requirements established by the State of California;
- (v) Provide garbage and recycling receptacles for immediate use by customers; and
- (vi) Pick up, remove and dispose of all garbage, refuse or litter consisting of foodstuffs, wrappers, and/or materials dispensed from the vending vehicle and any residue deposited on the street from the operation thereof, and otherwise maintain in a clean and debris-free condition the entire area within a 25-foot radius of the location where mobile food vending is occurring.

(j) Peddling or vending without a business license, vendor permit, or an encroachment permit (when required as provided in this Article) and/or in violation of conditions imposed in this Section or in a business license, encroachment permit, or vendor permit is a misdemeanor punishable as provided in Section 1.7 of this Code. With respect to short-term vending operations, each sixty (60) minute period of unauthorized parking beyond the permitted sixty (60) minute period shall constitute a separate and distinct offense.

Sec. 20-74.4 Permit Suspension, Revocation, and Appeal Procedures

(a) Where any provision of Section 20-74, *et seq.*, State law, or a condition of a vendor permit or encroachment permit is violated, the Deputy City Manager, Plans and Public Works, or his/her designee has the authority to suspend or revoke the vendor or encroachment permit. Notification of the suspension or revocation of the vendor permit must be made in writing, must state the reason(s) for the action, and must notify the vendor of the appeal process as set forth in subsection (b). The revocation or suspension shall become effective at the end of the appeal period and, if an appeal is requested, the action shall be stayed pending the decision of the Appeals Hearing Board.

(b) Any person who has been denied a vendor permit or any person whose encroachment or vendor permit has been suspended or revoked may request a hearing before the Appeals Hearing Board. The request for hearing must be made in writing and must be made within ten (10) calendar days from the date of the decision to deny, suspend, or revoke the permit. Upon receiving a written request for hearing, the Secretary for the Appeals Hearing Board shall set a hearing date, which shall occur no later than forty-five (45) days from the date of the request for hearing. The Secretary shall set forth in writing and send to the applicant or permittee, by means of registered mail, certified mail, or hand delivery, notice of the date, time, and place of the hearing at least five calendar days before the hearing. The Appeals Hearing Board shall consider any written or oral evidence presented to determine whether the suspension, revocation, or denial was in accordance with applicable laws. Within a reasonable time following the conclusion of the hearing, the Appeals Hearing Board will issue a written decision, which shall be mailed to the applicant to permittee. The decision of the Appeals Hearing Board shall be final.

SECTION 3: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason declared unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity, or ineffectiveness of any one or more of its sections, subsections, sentences, clauses, or phrases.

SECTION 5: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 3rd day of March, 2015, by the following vote:

AYES:	4	COUNCILMEMBERS:	Barrett, Downey, Haffa, Roberson
NOES:	1	COUNCILMEMBERS:	Smith
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:



Mayor of said City



City Clerk thereof

