

ORDINANCE NO. 3531 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

**AMEND MONTEREY CITY CODE SECTION 20-74.3 AND 20-74.4 PERTAINING TO
PEDDLING FOOD FROM THE PUBLIC RIGHT-OF-WAY**

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, In October 2015, the Council, staff, and the public expressed concerns with the potential impacts associated with the application of the long term vendor section of the ordinance such as: an increased potential for vehicular and pedestrian traffic hazards; longer periods of time where pedestrians would be forced into the street due to the queuing of customers on sidewalks; and the prevention of normal turnover of the City's limited on-street parking spaces.

WHEREAS, it is the intent of the Council that this ordinance be applied retroactively to any applications for a long term vendor (encroachment) permit that are pending at the time of its adoption in order to protect the health, safety, and general welfare of the City's residents, businesses, and visitors; and

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 74.3 is amended to delete subsection (h), and renumber sections (i) and (j), as subsections (h) and (i), to read as follows:

Sec. 20-74.3. Mobile food vending vehicles -- Regulations.

(h) Operation on Private Property. A mobile food vending vehicle on private property shall:

1. Have written documentation of the property owner's authorization to operate on the property in their possession while operating in the City;
2. Not remain in any single location in excess of two hours in any 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;
3. Confine the entire operation on the private property, including queuing of patrons;

4. Comply with all applicable food labeling requirements established by the State of California;
5. Provide garbage and recycling receptacles for immediate use by customers; and
6. 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) Peddling or vending without a business license, vendor permit, and/or in violation of conditions imposed in this section or in a business license, or vendor permit is a misdemeanor punishable as provided in Section 1.7. With respect to short-term vending operations, vending beyond the period authorized for parking shall constitute a separate and distinct offense.

SECTION 3: Monterey City Code, Chapter 20, Article 6, Section 74.4 is amended to read as follows:

Sec. 20-74.4. Mobile food vending vehicles -- 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 is violated, the Deputy City Manager, Plans and Public Works, or his/her designee has the authority to suspend or revoke the vendor 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) of this section. 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 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 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 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 or permittee. The decision of the Appeals Hearing Board shall be final.

SECTION 4: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: 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 6: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption. It is to be applied retroactively to any pending applications for an encroachment permit for long term vending operations on public streets.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 15th day of December, 2015, by the following vote:

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

APPROVED:

ATTEST:



Mayor of said City



City Clerk thereof

