

ORDINANCE NO. 3540 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMEND MONTEREY CITY CODE SECTION 20-74 TO ALLOW LONG-TERM OPERATION OF MOBILE FOOD VENDING VEHICLES IN SPECIFIC LOCATIONS

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 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, in March 2015, the City established a permitting process for three types of mobile food vending: short-term operation on public streets, long-term operation on public streets, and operation on private property;

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 mobile food vending 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, on December 15, 2015, the Council adopted Ordinance 3531, repealing the City Code provisions permitting the long-term operation of mobile food vending vehicles on public streets, and directed staff to work with business associations to identify appropriate locations for longer time periods of operation;

WHEREAS, on February 25, 2016, Planning and Code Compliance staff held a community meeting to discuss the following locations for long term vending:

Cass Street;
Del Monte Avenue between Camino El Estero and Camino Aguajito;
Dela Vina Avenue, west of Highway 1;
Ramona Avenue, west of Highway 1;
Hannon Avenue, west of Highway 1;
Garden Road;
Harris Court;
Thomas Owens Way;
Mandeville Court; and
Justin Court;

WHEREAS, at this meeting, business association representatives, neighborhood association representatives, mobile food vendors, and the public supported the abovementioned

locations;

WHEREAS, Planning staff consulted with the City Traffic Engineer on each of the concerns previously expressed in October 2015 and, based on CHP collision data and site visits, determined that the proposed locations do not present increased potential for vehicular and pedestrian traffic hazards; that the potential for queuing in the street is very low for the proposed locations; and that parking mobile food vending vehicles in the identified locations, which do not limit on-street parking, would not prevent normal turnover of the City's limited on-street parking spaces;

WHEREAS, in addition to having low potential for safety impacts, the proposed locations would serve areas in need of additional food service and none of the proposed locations are in the more heavily trafficked and space-constrained Downtown or Cannery Row; 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. The mobile food vending would be temporary and would be located on public streets which are not 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. The mobile food vending would be located on public streets which are not historically significant. The project does not involve ground disturbance; therefore, no impacts to archaeological resources will occur.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: The foregoing recitals are true and correct and are hereby adopted by the City Council.

SECTION 3. Monterey City Code, Chapter 20, Article 6, Sections 74 and 74.4 are hereby amended to read as follows:

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 mobile food vendor 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 from the right-of-way 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 when the vehicle is parked in the right-of-way.
- (g) Short-term Operation on Public Streets. In addition to the requirements in subsections (a)-(f), a mobile food vending vehicle on a public street or highway that remains in the same location on a short-term basis shall:
 - 1. 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 60 minutes, and shall not within a period of four hours again operate such vehicle within the limits of such block;
 - 2. 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.;
 - 3. Not conduct business within one block of any City park at which a City-approved and permitted special event is taking place without having obtained a special event permit;
 - 4. Only conduct business from a licensed vehicle or licensed trailer on a public street while parked in a legal parking space;

5. 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;
6. Not encroach onto 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;
7. Comply with all applicable food labeling requirements established by the State of California;
8. Provide garbage and recycling receptacles for immediate use by customers; and
9. 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. In addition to the requirements in subsections (a)-(f), a mobile food vending vehicle that remains in the same location on a public street or highway for longer than 60 minutes shall:

1. Operate exclusively for the time periods designated in the long-term mobile food vendor permit and from the location(s) designated in the permit, which may include only the following public streets:
 - a. Cass Street;
 - b. Del Monte Avenue between Camino El Estero and Camino Aguajito;
 - c. Dela Vina Avenue, west of Highway 1;
 - d. Ramona Avenue, west of Highway 1;
 - e. Hannon Avenue, west of Highway 1;
 - f. Garden Road;
 - g. Harris Court;
 - h. Thomas Owens Way;
 - i. Mandeville Court;
 - j. Justin Court.
3. Comply with all posted parking time limits;
4. Comply with all applicable laws and regulations relative to access to bathroom facilities;
5. Comply with all operating conditions imposed in the long-term mobile food vendor permit;
6. Comply with all applicable food labeling requirements established by the State of California;
7. Not encroach onto 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;
8. Provide garbage and recycling receptacles for immediate use by customers;
9. 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;
10. 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.; and

11. Not conduct business within one block of any City park at which a City-approved and permitted special event is taking place without having obtained a special event permit.

(i) Operation on Private Property. In addition to the requirements in subsections (a)-(f), 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.

(j) Peddling or vending without a business license or a mobile food vendor permit and/or in violation of conditions imposed in this Section or in a business license or mobile food vendor permit is a misdemeanor punishable as provided in Section 1-7. Vending beyond the period authorized for parking shall constitute a separate and distinct offense.

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 mobile food vendor permit. Notification of the suspension or revocation of the mobile food 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 mobile food 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. Formal rules of evidence shall not apply; any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. 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 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 May, 2016, by the following vote:

AYES:	5	COUNCILMEMBERS:	Barrett, Downey, Haffa, Smith, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:



Mayor of said City



City Clerk thereof