



Legislation Text

File #: 14-194, **Version:** 1

Staff Report for an Ordinance Adding Chapter 4-34 of the San Leandro Municipal Code Pertaining to Mobile Food Vending; an Ordinance Amending Chapter 4-5 of the San Leandro Municipal Code Pertaining to Peddlers, Solicitors, and Itinerant Merchants; and a Resolution to Reduce the Business License Tax for Mobile Food Vendors

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council conduct a first reading and pass to print the following ordinances to amend the San Leandro Municipal Code, and approve a resolution to reduce the Business License Tax, as more fully described below:

1. Approve on first reading (pass-to-print) an ordinance adding Chapter 4-34 to Title 4 of the San Leandro Municipal Code, to be entitled “Mobile Food Vending”; and
2. Approve on first reading (pass-to-print) an ordinance to amend Chapter 4-5 of Title 4 of the San Leandro Municipal Code entitled “Peddlers, Solicitors, and Itinerant Merchants”; and
3. Approve a resolution to reduce the Business License Tax for Mobile Food Vendors, to take effect upon the effective date of the proposed ordinance that adds Chapter 4-34 to Title 4 of the San Leandro Municipal Code.

BACKGROUND

The City Council, residents, businesses and employees of San Leandro businesses have expressed interest in attracting a wide range of gourmet food choices to the City. To satisfy this demand, Office of Business Development staff sought out food truck event organizers “Food Truck Mafia” and held the first “San Leandro Street Eats” event in Downtown San Leandro last summer. The first night was a success with nine food trucks in attendance and long lines for each truck’s food offerings. Weekly events have continued and a steady crowd gathers for the many food truck vendors in the Food Truck Mafia group. However, the popularity of these events has not satisfied the demand for additional food options in San Leandro.

The most frequent complaint from interviews with area business leaders in the Next Generation Workplace District Study is the lack of desirable dining options in the industrial area. At the February 11, 2014 City Council meeting, the Office of Business Development presented the Next Generation Workplace District Study Action Plan. The Action Plan proposes to incentivize pop-up restaurants or alternatively mobile food trucks to increase food options Citywide, especially in the industrial areas. However, while preparing the Action Plan and by promoting events such as the Downtown Street Eats, City staff found the existing regulations to be ill-equipped, outdated with current law and in many cases cost prohibitive for food truck businesses.

Analysis

According to the National Restaurant Association, the growth of mobile food trucks will soar in the next five years, generating up to \$2.7 billion in revenue nationally by 2017-up from \$650 million in 2012. Nationwide, cities are seeing more food trucks in operation, some in unexpected places like office and industrial parks, where zoning ordinances typically preclude or make it costly to establish restaurants. While ice cream trucks and job-site lunch wagons haven't disappeared, they are increasingly being joined by gourmet mobile food vendors.

Historically, selling wares and food products on the street, though not prohibited, was considered a negative or an unwanted business. Strict peddler and solicitor ordinances were created to ensure the public's safety and welfare from potential nuisances created by outdoor sales, door-to-door sales and street vending. Fingerprinting, background checks, costly license fees and permits are the foundation of almost all peddler/solicitor ordinances. However, the new wave of mobile food vending does not belong in the category of peddler or solicitor. To keep up with this rapidly evolving industry, many cities across the Bay Area and the nation have upgraded their regulations, removing fingerprinting requirements, lowering or flattening fees, and clearly outlining permitted locations and separations.

Regulatory Framework

The City's ability to regulate vehicular vending on public streets is limited by state law. The California Vehicle Code (CVC) preempts local parking regulations except as expressly authorized by state law. CVC Section 22455 provides that vendors must bring their vehicle to a complete stop and be legally parked before vending, and further gives cities the ability to regulate "*the type of vending and the time, place, and manner of vending upon any street*" for reasons of public safety. On private and public property, as opposed to public streets, the City may create appropriate regulations in the interest of protecting public health, safety and welfare.

Under another item on tonight's agenda, the proposed zoning amendments introduce the mobile food vending land use category and the permitted zoning categories on private and public property. The proposed ordinance attached to this staff report adds the supplemental use and public street regulations, as well as permitting requirements, to the San Leandro Municipal Code with reference to the City's Zoning Code.

Proposed Mobile Food Vending Ordinance Outline

To prepare this ordinance, staff used the following methods to better understand options in creating appropriate regulations:

- Understand state law and City authority to regulate mobile food vending;
- Observe current food truck operations in the City;
- Recognize community, business and Council concerns;
- Examine which options are appropriate, considering existing and potential issues that are specific to the City;
- Survey other cities throughout the Bay Area, California and other cities nationwide that have recently updated their regulations.

The following is an ordinance summary and rationale for regulating mobile food vendors:

State & Alameda County Compliance

Food trucks are required to comply with applicable city, state and federal regulations. Food trucks must obtain many necessary permits, including a business license permit, environmental health permits from Alameda County to ensure food safety and handling, and a Seller's Permit from the California Board of Equalization to ensure collection of retail sales taxes. All mobile food vendors will be required to display the Alameda County Environmental Health Department permit in plain view of customers and any licensing agencies. The Health Department's new color placard grading system will also be on display as required by that agency's policies. All mobile food vendors will be required to provide access to restroom facilities for themselves and employees within 200 feet of their location when stationary for more than one hour.

Mobile Food Vending Permit

A new permit and business license application will be created for Mobile Food Vending. The permit application will require copies of all other applicable licenses, registrations and permits. Insurance and indemnification requirements will be the same as they are in the current peddler application requirements. A route map or written description showing the proposed routes and locations for each mobile food vending unit will be required at the time of application and must be updated when changes occur.

Public Safety, Parking & Traffic/Congestion

The update of the City's Mobile Food Vending ordinance provides the opportunity to address minimum public safety and traffic congestion standards for mobile food vending activities. The following is a summary of the important public safety, parking / traffic regulations proposed in the ordinance:

- **Setbacks & Traffic Circulation.** Minimum distances between driveways, curb returns and prohibitions in vision triangles are necessary to ensure that mobile food vending units do not create dangerous situations for other vehicles and pedestrians. Vendors must observe all required traffic statutes, ordinances and posted signage on public streets.
- **Self-sufficient utilities.** Mobile food vending units must be self-sufficient in regards to all utilities needed for operation unless permits for utility hookups are approved by the City.
- **Alcohol Sales.** No alcohol sales or service are permitted by vendors unless the vendor is approved to vend from the State Department of Alcoholic Beverage Control.
- **Fingerprinting.** Fingerprinting for background checks will only be required for mobile ice cream vendors because their business involves sales and service to children. All other mobile food vendors will no longer be required to provide fingerprints or background checks to the Police Department.
- **Separations.** Separations from specific land uses are proposed in order to reduce adverse safety, circulation, and traffic impacts between activities. Some exceptions can be permitted as long as there are no adverse safety, circulation and/or traffic impacts between the two activities. Below is a summary of the separation requirements:
 - **Schools.** A 500-foot separation between mobile food vendors and schools is proposed.
 - **Restaurants/Food Service Establishments.** A 300-foot separation is proposed between mobile food vendors and active full service restaurants, cafes, delicatessens or fast food establishments. This separation is necessary in order to reduce adverse impacts on parking lot and pedestrian circulation, space availability and traffic congestion in and around these high traffic generating land uses.

- Approved Community Events. This 300-foot separation is necessary to prevent any unapproved or scofflaw vendors from operating outside of the special event/community event approval requirements and conditions.

Private and Public Property Standards

Another problem with the existing peddler/solicitor ordinance is that it did not apply sufficient guidelines for operating on private and/or City-owned properties (as opposed to public streets). Previously, the only way these activities could occur on private/City-owned property was through the approval of an outdoor facilities or special event permit. These approvals were costly and not appropriate for the one or two mobile food vending units that some businesses sought to invite for their employees during the workday. The associated Zoning Code amendments provide the zoning districts where mobile food vending may occur on private property.

Minimum standards are necessary for maintaining cleanliness, adequate parking, loading, on-site circulation and access for emergency vehicles. Property owner permission is required. However, only three mobile food vending units or less may be on one parcel of property at a time. Additional mobile food vending units may be permitted by a City approved or sponsored special event, temporary use or outdoor facilities permit pursuant to the San Leandro Zoning Code.

Clustering on Public Streets

No separation between units on public streets is proposed. However, in order to reduce adverse impacts such as traffic congestion and parking space reductions from clustering, a fivehour time limit in one location within an 18hour period will be required. The maximum time limit will ensure that food trucks do not establish semi-permanent locations and do not remain in one location for longer than the time required to provide one full meal service.

Solid Waste & Environmental Standards

Maintaining cleanliness in and around the mobile food vending unit is important considering that these activities are outside and mobile. Each unit must have a solid waste container within two feet while also maintaining appropriate clearance on sidewalks for pedestrian accessibility. Mobile food vendors cannot use public or private solid waste facilities unless granted written permission. Other considerations related to grease, oil and other cooking waste are addressed in this ordinance through compliance with the Alameda County Environmental Health Department permit.

Shoreline Recreation Area

The existing peddler ordinance prohibits mobile food vending, except for ice cream, in the Shoreline Recreation Area, which includes the San Leandro Marina. The prohibition includes both private/public property and the public streets. As stated above, the California Vehicle Code precludes any regulations that prohibit mobile food vending on public streets. The proposed ordinance will permit this activity on the Shoreline's public streets. The proposed Zoning Code amendments will not permit the activity on private or public property zoned CR, Community Recreation District. Revisions to the existing Peddler/Solicitor ordinance are recommended to comply with state law pertaining to vending on public streets.

Inspections, Revocation & Enforcement

Inspections may be performed by City representatives at any time while the business is operating within the City. Access must be provided by anyone working on the mobile food vending permit and

the business license and health department permits must be on display. The Mobile Food Vending Permit revocation process follows the business license revocation procedures. The violations and enforcement section outlines the authority granted to the City Manager to administratively require removal or relocation of mobile food vending units whenever it appears that the activities are having an adverse impact. Additional enforcement actions can be taken with the issuance of code violation citations, authority to tow mobile food vending units, and suspension of mobile food vending permits. These procedures ensure a mobile food vendor’s due process rights through an appeal procedure.

Business License Tax & Fees

A general theme coming out of the discussions with the Food Truck Mafia group and individual mobile food vendors is that the existing fee structure is cost prohibitive and outdated. Currently, each mobile food vendor must have a separate peddler permit for themselves and each employee in the mobile food vending unit and all employees must be fingerprinted in conjunction with a background check. Typically, a mobile food vendor has an average of three employees, which would require a business license tax of approximately \$390 annually for each mobile food vending unit, not including any special event/outdoor facilities permit fee of \$400, or any zoning entitlements (private/public property) of \$100.

Although this fee structure was tolerable for catering trucks that work a fixed route and focus their business in San Leandro, the cost burden is particularly acute for the more modern “gourmet” food trucks. This is because the newer trucks work over a far broader territory and may need to obtain permits in 10-20 different cities.

Over the past year, staff granted flexibility to the mobile food vendors by working with them on alternative fee scenarios while preparing this ordinance. However, a more simplified and affordable business license tax structure is necessary in order to continue attracting and promoting the upscale, gourmet style mobile food vending businesses that the City, residents, and businesses desire.

The existing breakdown for a peddler/solicitor business license tax for a three-employee operation is as follows:

Business License Fee:	\$158.10
State CASp Fee:	\$1.00
Peddler/Solicitor Permit Fee:	\$75.00
<u>Fingerprinting/Police Admin Fee:</u>	<u>\$156.00</u>
Total Fee/Tax:	\$390.10

These fees were originally intended for ice cream truck vendors who traditionally have only one person in the truck. Mobile food vending has changed dramatically just in the last several years such that mobile food vendors now feature larger mobile vending units offering upscale gourmet food options with 2-4 employees. The proposed ordinance will require only one mobile food vending permit and business license per mobile food vending unit no matter how many employees work in the unit. Additionally, as the focus of the permit is on the business rather than the employees, fingerprinting will no longer be required, except for ice cream vendors.

Staff researched comparative business license taxes in surrounding cities and throughout the Bay Area that have mobile food vending ordinances and found fees range significantly. Business license taxes for surrounding cities such as Alameda, Hayward, Oakland and unincorporated Alameda

County are \$105, \$66.80, \$168 and \$59 respectively, not including zoning or other entitlement fees.

To attract Mobile Food Vendors to the City, the attached resolution proposes to reduce the tax for mobile food vendors by waiving the \$36.50 per employee portion and charging only the annual base fee of \$121.60. Mobile food vendors will be required to have a mobile food vending permit/business license for each mobile food vending unit even if owned by the same vendor.

The proposed breakdown for a mobile food permit and business license tax is as follows:

Business License Fee (base fee only):	\$121.60
State CASp Fee:	\$1.00
Mobile Food Vendor Permit Fee:	\$0
<u>Fingerprinting/Police Admin Fee:</u>	<u>\$0</u>
Total Fee/Tax:	\$122.60

Note: Ice cream vendors are required to pay \$52 fingerprinting/Police Admin Fee for a total cost of \$194.60

Current Agency Policies

The following Municipal and Zoning Code Sections currently regulate mobile food vending:

- Municipal Code Title 2, Chapter 2-2, Business License
- Municipal Code Title 4, Chapter 4-5, Peddlers, Solicitors & Itinerant Merchants
- Zoning Code Part IV, Article 16, Division 3, Section 4-1662 Outdoor Facilities and Storage/Loading Facilities.

Environmental Review

The proposed amendments to the Municipal Code are exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the State CEQA Guidelines because the General Rule exemption states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, that the activity is not subject to CEQA. In addition, CEQA defines “project” as an activity that may result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment (Public Resources Code Section 21065).

Updating the Municipal Code in the manner described herein does not alter the existing zoning regulations in any substantive manner such that there is a possibility for the amendments to result in any direct or indirect physical change in the environment or cause any significant environmental effects. Any potential indirect secondary impacts from the proposed amendments on the physical environment are speculative and are not reasonably foreseeable, and are, therefore, not subject to review under CEQA.

Board/Commission Review and Actions

On January 30, 2014, the Planning Commission and the Board of Zoning Adjustments held a joint workshop meeting to discuss the Zoning Code amendments and offered comments relating to a hypothetical mobile food vending ordinance. Staff considered those comments and incorporated

them into a modern Mobile Food Vending ordinance where it was deemed practical and consistent with the purpose of modernizing the regulations.

Summary of Public Outreach Efforts

The Office of Business Development sought review and comment on the proposed ordinance from the following internal and external individuals, organizations, and departments:

- Presented summary of the ordinance at the March 28, 2014 San Leandro Downtown Association meeting
- Met with the Alameda County Health Department mobile food inspection team on April 14, 2014
- Spoke individually with multiple food truck operators who conduct business within San Leandro

Legal Analysis

The attached ordinances, resolution and related materials have been reviewed and edited by the City Attorney's Office. At staff's request, the City Attorney's Office conducted legal analysis regarding the proposed regulatory scheme, and finds that the ordinance as proposed passes legal muster.

Fiscal Impacts

Staff believes the business license fee reduction will not negatively impact the General Fund. The purpose of modernizing the Municipal Code regulations and simplifying the fees is to encourage more mobile food vending throughout the City. Although the City will collect less tax per food truck, there will be more trucks operating within the City. Therefore, revenue generated would be either neutral or not significantly less than the existing revenues.

ATTACHMENT(S)

None

PREPARED BY: Justin Proffitt, AICP, Project Specialist, Community Development