



Agenda Item #: \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Tell and Members of the City Council

**THROUGH:** David N. Carmany, City Manager

**FROM:** Roxanne Diaz, City Attorney  
Richard Thompson, Director of Community Development  
Eric Haaland, Associate Planner

**DATE:** February 7, 2012

**SUBJECT:** Regulations for Mobile Food Trucks in the City of Manhattan Beach: Ordinance No. 2157 Amending the Manhattan Beach Municipal Code and Adding a New Chapter 3.68 Regarding Mobile Food Vendors on the Public Right-of-Way

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### **RECOMMENDATION:**

Staff recommends that the City Council conduct the continued public hearing, take public testimony and: (i) waive full reading of Ordinance No. 2157, by introducing and read by title only; (ii) introduce Ordinance No. 2157, an Ordinance of the City of Manhattan Beach Adding a New Chapter Regarding Mobile Food Vendors and Further Amending the Manhattan Beach Municipal Code.

### **FISCAL IMPLICATION:**

There are no fiscal implications associated with the recommended action.

### **DISCUSSION:**

The City Council, at its regular meeting of January 17, 2012, considered a proposed Municipal Code Amendment pertaining to regulations for mobile food vendor on public streets. The Planning Commission had preliminarily reviewed information regarding food trucks operating on public streets, which was in anticipation of the City Council's review of the matter. The City Council opened the hearing on January 17<sup>th</sup> and continued to the matter to allow the City Attorney to meet with the SoCal Mobile Food Vendor's Association ("Association") who had submitted a letter requesting that the matter be continued so that the Association can meet with the City Attorney to discuss their concerns.

The City Attorney subsequently spoke with the Association's attorney and based on that discussion some revisions have been made to the ordinance. One of the Association's concerns pertains to the requirement in the proposed ordinance that mobile food vendors provide a restroom facility for its employees and patrons if the mobile food vehicle stops to conduct business for more than one hour. The Association believes that the City is preempted by state law from adopting provisions regarding bathroom facilities as set forth in the California Retail Food Code.

The California Retail Food Code regulates standards regarding food facilities to safeguard the public health. These standards are uniform statewide. One of the standards adopted by the State pertaining to mobile food facilities is a requirement that “[a mobile] food facility . . . be operated within 200 feet travel distance of an approved and readily available toilet and hand washing facility . . . to ensure that restroom facilities are available to facility employees whenever the mobile food facility is stopped to conduct business for more than a one-hour period.” [Health and Safety Code Section 114315]. Since California State law already regulates restroom facilities for employees of mobile food vehicles, the proposed ordinance has been revised to delete the reference to employee restroom facilities. There is no requirement in state law, however, that requires restroom facilities for customers. Health and Safety Code Section 113709 states that a local government is not prohibited from “regulating the provision of consumer toilet and handwashing facilities . . . .” Without restroom facilities, there is an increased risk of unsanitary service of food or food products by food vendors. Additionally, customers purchasing from such vendors are deprived of the opportunity to wash their hands before eating. The proposed ordinance contains a provision requiring that restroom facilities be available for customers that would mirror that in state law for employees. This provision, however, would only be required if a mobile food vendor intends to stay at a location for more than an hour.

In addition to this requirement, the proposed ordinance contemplates a standards that mobile food vendors must adhere to while in the public right of way. These standards and criteria include: compliance with all parking and Vehicle Code provisions, ensuring that the food truck is not parked so as to obstruct pedestrian or vehicular traffic or unsafely obstruct visibility, and staying at least 300 feet away from school facilities. Provisions are also included to ensure that patrons are not encouraged to be in the street in order to obtain the food products from the truck such as a provision that the vendor may not distribute food from the side of the truck that is exposed to the street and/or traffic.

In addition, provisions have been included to ensure that trash is picked up and based on the City Attorney’s discussion with the Association this requirement has been amended so that it pertains to trash from the mobile food truck.

Last, a food truck must comply with all applicable state and local laws including obtaining a valid business license and any permits required by the Los Angeles County Health Department. Staff will be bringing the City Council an ordinance to update the City’s current Health Code, which has adopted by reference the Los Angeles County Health Code. The City has not updated its Health Code since 1997 and since this update will cover more than just mobile food vendors, and therefore the City Attorney will separately bring this ordinance for the Council’s consideration.

It should be noted that the proposed ordinance also made revisions to the City’s current regulations regarding the parking and standing of peddlers to delete out-of-date provisions and also references to vehicles, as mobile vending would be covered by Chapter 3.68. An updated redline of the proposed ordinance is attached.

A question arose as to whether the City’s plastic bag ban ordinance would apply to mobile food vehicles. The ordinance applies to vendors, which includes businesses that conduct business

within the City and provide perishable goods. A mobile food vendor is a business required to obtain a business license if it desires to sell its food products in the City. As such, it would be required to comply with the City's ordinance similar to any other food establishment.

After introduction of Ordinance No. 2157, staff would return for City Council adoption at the February 21, 2012, meeting.

Attachment:

A. Ordinance No. 2157

C: Food Truck Association  
Downtown Business Association  
Chamber of Commerce

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ORDINANCE NO. 2157

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MANHATTAN BEACH, CALIFORNIA, ADDING A NEW CHAPTER  
REGARDING MOBILE FOOD VENDORS AND FURTHER AMENDING  
THE MANHATTAN BEACH MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY  
ORDAIN AS FOLLOWS:

**Section 1.** The Manhattan Beach City Council hereby finds as follows:

A. The 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 regulate in furtherance of public health and welfare.

B. The City is extremely dense with a land area of just 3.93 square miles and a population of approximately thirty-four thousand people. Moreover, the combination of an oceanside location, fine climate, and the availability of urban facilities, services and entertainment make the City an extremely desirable place to work or visit. Consequently, a large number of nonresidents come into the City to work or recreate each day, which further contributes to population density and vehicular and pedestrian congestion.

C. Mobile food vending and catering trucks create the potential for safety hazards, such as but not limited to, encouraging pedestrians to cross mid-block to purchase food.

D. The act of looking for prospective buyers while operating a mobile food vending vehicle makes the operator less attentive to pedestrian and vehicular traffic. When done on public roadways, this poses obvious traffic and safety risks to the public which the City seeks to prevent.

E. Mobile food vendors who fail to park their vehicles correctly during a transaction attract prospective buyers onto public roadways, creating a further traffic and public safety hazard.

F. The City has an important and substantial public interest in providing regulations to prevent safety, traffic and health hazards, as well as to preserve the peace, safety and welfare of the community.

**Section 2.** A new Chapter 3.68 is hereby added to Title 3 of the Manhattan Beach Municipal Code to read as follows:

**“Chapter 3.68. Mobile Food Vendors.**

**3.68.010. Authority.** Chapter 3.68 is adopted pursuant to the authority granted to the City of Manhattan Beach by Section 22455 of the California Vehicle Code, which permits local authorities to regulate the type of vending and the time, place and manner of vending from vehicles upon the street in order to promote public safety.

**3.68.020. Definitions.** For purposes of this Chapter, the following words or phrases shall have the following meanings:

- A. Food or Food Products. Any type of edible substance or beverage.
- B. Mobile Food Vendor. A person that operates or assists in the operation of a vending vehicle.
- C. Vend or Vending. To sell, offer for sale, display, barter, exchange, or otherwise give food or food products from a vending vehicle.
- D. Vendor. A person who vends, including an employee or agent of a vendor.
- E. Vending Vehicle. Any self-propelled, motorized device or vehicle 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 food or food products are sold, offered for sale, displayed, bartered, exchanged or otherwise given.

**3.68.030. Mobile Food Vendors In The Right of Way.** A mobile food vendor may locate its vehicle in the public right-of-way as long as the mobile food vendor adheres to the following standards and conditions:

- A. The vending vehicle is in full compliance with all parking and Vehicle Code provisions which apply to the location at which it is parked.
- B. The vending vehicle does not obstruct pedestrian or vehicular traffic.
- ~~C. The vending vehicle does not unsafely obstruct visibility for traffic or pedestrians or otherwise create an unsafe condition.~~
- ~~C.D. Vending is prohibited on the exposed street and/or traffic side of the vending vehicle.~~
- ~~DE. The mobile food vendor shall not distribute any item from the vending vehicle in a manner that causes any person to stand in that portion of the street that is between the vehicle and the center of the street.~~
- ~~EF. The mobile food vendor shall not encroach onto a public sidewalk with any part of its vending vehicle or any other equipment or furniture related to the operation of its business.~~
- ~~FG. The mobile food vendor shall not keep, maintain or operate any vending vehicle upon any public street within 300 feet of the nearest property line of any property on which a school building is located between the hours of seven a.m. (7:00 a.m.) and five p.m. (5:00 p.m.) of any school day. This prohibition will not apply if the school principal gives the mobile food vendor written permission to park on school property. The mobile food vendor shall provide a copy of that authorization to the City within five days of its receipt.~~
- ~~GH. The mobile food vendor has a valid business license from the City.~~

H. The mobile food vendor has a valid permit, certificate of other required approval from the Los Angeles County Department of Health.

I. All food products sold or provided from the vending vehicle shall comply with all applicable food labeling requirements established by the State of California and the mobile food vendor must obtain all required permits, including without limitation, health permits, to sell or provide such items.

J.K. No mobile food vendor shall engage in vending unless he or she maintains a clearly designated litter receptacle in the immediate vicinity of the vending vehicle, marked with a sign requesting use by patrons. Prior to leaving the location, the mobile food vendor shall pick up, remove and dispose of all trash generated by the mobile food vendor's operation ~~or refuse, including trash and refuse from the area located~~ within a 25-foot radius of the mobile food vendor's location. ~~where mobile food vending is occurring.~~

K. The vending vehicle shall not operate within 25 feet of any street intersection controlled by a crosswalk, traffic light, or stop sign.

L. No mobile food vendor shall vend from any vending vehicle for more than one hour unless the mobile food vendor ~~and the vendor's~~ customers have permission to use an approved and readily available toilet and hand washing facility that is located within two hundred feet travel distance from the location where the food or food products are offered for sale or sold. If the toilet and hand washing facility is privately owned, the mobile food vendor shall obtain written permission from the owner or authorized agent, and a copy of the written permission shall be kept in the vehicle and available for inspection at all times while vending. The vendor shall clearly post on the vehicle, within three feet of the opening in the vehicle through which food or food products are offered for sale or sold and visible to customers, a notice stating that (1) a toilet and hand washing facility has been made available as required by this subsection and (2) the location of that facility. Prior to commencing vending, the peddler shall file a "facilities report" with the City, on a form provided by the City, listing all toilet and hand washing facilities that the vendor will be utilizing to fulfill the vendor's obligations under this subsection, and attach thereto a copy of each required written permission. An approved facilities report must be on file with the City before a business license will be issued or renewed. A revised facilities report shall be filed with the City (1) before the vendor may utilize any toilet and hand washing facilities not itemized on the current facilities report, and (2) within 10 days of the date permission to use a toilet and hand washing facility is revoked, cancelled or expires. To the extent state law imposes a stricter standard, state law shall apply.

**3.68.040. Compliance with State and Local Laws.**

A. Mobile food vendors shall comply with all applicable state and local laws.

B. This Chapter is not intended to be enforced against pedestrian food vendors or against food vendors who operate human powered push carts and other non self-propelled vehicles. Such vendors may be regulated by other Chapters in this Code of by other state or local laws.

**Section 3.** Section 14.36.130 of the Manhattan Beach Municipal Code is hereby amended in its entirety to read as follows:

"14.36.130 - Unlawful parking—Peddlers, vendors.

A. Except as otherwise provided in this section no person shall stand or park any ~~vehicle, wagon or pushcart~~ from which goods, wares, merchandise, fruits, vegetables or food stuffs are sold, displayed, solicited or offered for sale or bartered or exchanged, ~~or any lunch wagon or eating car or vehicle,~~ on any portion of any street, including parkways and sidewalks, within this City except that such ~~vehicles,~~ wagons or pushcarts may stand or park only at the request of a bona fide purchaser for a period of time not to exceed ten (10) minutes at any one place, ~~provided two lanes of unobstructed travel remain, one lane in each direction. The provisions of this subsection shall not apply to persons delivering such articles upon order of, or by agreement with a customer from a store or other fixed place of business or distribution.~~

B. No person shall park or stand on any street, including parkways and sidewalks, any ~~lunch wagon, eating cart or vehicle,~~ or pushcart from which tamales, peanuts, popcorn, candy, ice cream or other articles of food are sold or offered for sale without first obtaining a written permit to do so from the Chief of Police, which shall designate the specific location in which such cart shall stand.

~~C. No person shall park or stand any vehicle or wagon used or intended to be used in the transportation of property for hire on any street while awaiting patronage for such vehicle or wagon without first obtaining a written permit to do so from the Chief of Police which shall designate the specific location where such vehicle may stand.~~

~~C.D.~~ Whenever any permit is granted under the provisions of this section and a particular location to park or stand is specified therein, no person shall park or stand any ~~vehicle,~~ wagon, or pushcart on any location other than as designated in such permit. In the event that the holder of any such permit is convicted in any court of competent jurisdiction for violating any of the provisions of this section, such permit shall be forthwith revoked by the Chief of Police upon the filing of the record of such conviction with such officer and no permit shall thereafter be issued to such person until six (6) months have elapsed from the date of such revocation.

~~D.E.~~ The fee for any permit issued under this section shall be established by Council under separate resolution."

**Section 4.** The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment. The Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act pursuant to Section 15061(b) (3) of Title 14 of the California Code of Regulations.

**Section 5.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or



enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**Section 6.** The City Clerk shall cause this ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption of this ordinance.

**Section 7.** This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ of \_\_\_\_\_, 2012.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor Nicholas W. Tell, Jr.  
City of Manhattan Beach, California

ATTEST:

\_\_\_\_\_  
Liza Tamura. City Clerk

APPROVED AS TO FORM:



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Roxanne M. Diaz, City Attorney