

ORDINANCE NO. 2013-02(RR)

AN ORDINANCE OF THE CITY OF ESCONDIDO,
CALIFORNIA, AMENDING ESCONDIDO
MUNICIPAL CODE, CHAPTER 16, LICENSES
AND BUSINESS REGULATIONS, REGARDING
MOBILE FOOD FACILITIES

CASE NO. PHG 12-0007

WHEREAS, the California Retail Food Code (Cal. Health and Safety Code Sections 113700 et seq.) establishes local regulatory authority over mobile food facilities and allows mobile food facilities to operate in accordance with local codes, ordinances and regulations, and

WHEREAS, Section 22455 of the California Vehicle Code authorizes the City to regulate the time, place, and manner of vending from mobile food facilities to protect public safety in the public right-of-way; and

WHEREAS, Section 114315 of the Retail Food Code requires mobile food facilities stopped to conduct business for more than a one-hour period to ensure that restrooms are available within 200 feet travel distance for employee use. Section 113709 of the Retail Food Code authorizes the City to regulate the provision of restrooms for food facility customers, and the public health and safety require food facilities to make restrooms available for employees and customers; and

WHEREAS, Escondido Municipal Code Section 28-161 states that no person shall stand or park any vehicle, wagon or pushcart from which goods, wares, merchandise, fruits, vegetables or foodstuffs 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 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; and

WHEREAS, that the City Council has determined that this Amendment to the Municipal Code is exempt from the California Environmental Quality Act (“CEQA”) in conformance with Title 14 California Code of Regulations Section 15061(b)(3) “General Rule” and finds that no significant environmental impact will result from approving this code amendment.

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That Article 7, Mobile Food Facilities, is added to Chapter 16, Licenses and Business Regulations Generally, as follows.

Article 7. Mobile Food Facilities.

Sec. 16-405. Definitions. The following words and phrases, whenever used in this article, shall be construed as defined in this section, unless from the context a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

- (a) *Mobile Food Facility* means any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. “Mobile food facility” does not include a “transporter” used to transport packaged food from a food facility, or other approved source to the consumer.
- (b) *Mobile Food Facility Permit* means the authorization granted by the City to a property owner or person with a possessory interest in a specific property to allow the temporary use of a Mobile Food Facility on their respective property subject to the requirements of the Article.
- (c) *Operator* means the person who owns, manages, or vends from a Mobile Food Facility.

(d) *Responsible person* means a property owner, a tenant, a person occupying or having control or possession of any real property, any person with a legal interest in real property and any person who directly manages a business or property or who demonstrates responsibility for the placement or operation of a Mobile Food Facility on a specific property, or any agents thereof.

Sec. 16-406. Separate Business License and Permit Required. An Operator shall have a business license and a Responsible Person shall obtain a Mobile Food Facility Permit, as required by this Article.

(a) It shall be unlawful for an Operator to operate a Mobile Food Facility without a separate business license for each vehicle.

(b) It shall be unlawful for an Operator or a Responsible Person to allow, authorize, operate, or use a Mobile Food Facility without a Mobile Food Facility Permit unless otherwise permitted by City, state or federal law.

Sec. 16-407. Permit requirements.

(a) The Director of Community Development shall administer Mobile Food Facility Permits issued pursuant to this Article.

(b) The Director shall issue a Mobile Food Facility Permit to a Responsible Person, only for properties in residential-agricultural or industrial zones, as an accessory use to a beer or wine manufacturing business, when the proposed use will not have a significant impact on the permanent uses provided in the Escondido Zoning Code.

(c) An application for a Mobile Food Facility Permit shall be submitted on an application form secured from the Director and shall be accompanied by a nonrefundable fee. The application shall provide information necessary for review of the application by appropriate city departments.

(d) An approved special event permit or facility use permit from the City, specifically authorizing a Mobile Food Facility at the event or facility, shall exempt an Operator or a Responsible Person from the Mobile Food Facility Permit required in Section 16-406(b) and may exempt the Operator or Responsible Person from the operating requirements in Section 16-409.

(e) A Mobile Food Facility that stops for not more than twenty minutes on a scheduled route to provide service directly at a construction site or other business and does not vend to the general public during the scheduled stop will exempt any Operator or Responsible Person from the requirements identified in Sections 16-406(b) and 16-409.

Sec. 16-408. Permit Enforcement. The Director of Community Development may issue administrative citations or take any other enforcement action

authorized by this Code, including permit revocation, upon finding a violation of this Article.

Sec. 16-409. Operating Requirements. It shall be unlawful for an Operator or a Responsible Person to violate any of the following regulations.

(a) Parking of a Mobile Food Facility at any location (inclusive of set-up and clean-up times) shall be limited to four hours daily for five days within any seven-day period. The hours of operation shall be stated on the use permit application and may only be modified by the director's approval of a new application setting forth the proposed operating hours.

(b) Each Mobile Food Facility operator shall have the following supporting provisions visibly available and accessible, for the duration of the approved hours of operation.

(1) Adequate number of trash and recycling receptacles, but in no case less than two, to contain the amount of anticipated trash during the authorized operational period. The receptacles shall be set up and removed by the operator, at the beginning and closing of each such period. In-truck hatch receptacles are not sufficient. The operator shall not dispose of any refuse or waste in any public or private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of such operator.

(2) Restroom facilities in clean working order available for operator, employee and customer use, including operational toilets and hand-washing facilities with hot water, soap, and paper towels. Such restroom shall be located no further than 200 feet travel distance from the parked Mobile Food Facility, and shall be available during the Mobile Food Facility hours of operation. If such restroom facilities are not owned, operated, or otherwise provided by the Operator, a written agreement by the owner of such facilities, stating the terms of availability of the facilities, shall be identified prior to approval by the City.

(c) Placement of the Mobile Food Facility on private property shall not reduce the number of parking spaces below that which is required for the existing on-site uses during business hours of the on-site uses unless specifically approved by the City.

(d) The Mobile Food Facility shall be entirely self-sufficient in regards to gas, electricity, water, and telecommunications.

(e) Neither the Mobile Food Facility nor any of the required support items shall obstruct or interfere with the free flow of pedestrian or vehicular traffic, including to or from any business, public building or residence, nor restrict sight distance at driveways and intersections.

(f) No Mobile Food Facility shall use, play or employ any sound, outcry, amplifier, loudspeaker or any other instrument or device for the production of

sound where said sound exceeds the exterior sound standards specified in Chapter 17, Article 12, of this code.

(g) No televisions, radios, or other device intended for amusement or entertainment purposes shall be operated in conjunction with a Mobile Food Facility.

(h) No tables, chairs, furniture or other devices to provide patron seating shall be allowed unless expressly authorized by the City.

(i) Signs for a Mobile Food Facility shall be limited to that on the vehicle only.

SECTION 2. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 3. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 10th day of April, 2013 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MASSON, MORASCO, ABED

NOES : Councilmembers:

APPROVED:



SAM ABED, Mayor of the
City of Escondido, California

ATTEST:



DIANE HALVERSON, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, DIANE HALVERSON, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2013-02RR passed at a regular meeting of the City Council of the City of Escondido held on the 10th day of April, 2013, after having been read at the regular meeting of said City Council held on the 3rd day of April, 2013.



DIANE HALVERSON, City Clerk of the
City of Escondido, California

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