

## **PLANNING COMMISSION**

**TO:** Planning Commission  
**FROM:** Planning Staff  
**SUBJECT:** AZ12-0007 Municipal Code Amendment – (Mobile Food Trucks)

**STAFF RECOMMENDATION:**

Provide input on the proposed Amendment to the Municipal Code

**PROJECT DESCRIPTION:**

An amendment to the Escondido Municipal Code to allow mobile food trucks on private property within commercial zones subject to the issuance of an appropriate use permit; allow them on city streets and public property subject to a Special Event Permit; and also to allow them at breweries and wineries.

**LOCATION:**

Citywide

**BACKGROUND:**

Food trucks are not a new concept, but are increasing in popularity and continuing to evolve from their traditional examples: the ice cream truck and lunch/catering truck that sell prepackaged food. The old food truck business model generally consisted of a smaller converted truck or van that would provide prepared packaged food from a licensed commissary and would drive a designated route and stop only for a short time at the request of a customer. Technology and the recent economic conditions have given rise to a new generation of entrepreneurs where today's food truck business model offers unique, higher-end gourmet dishes that involve some on-site food preparation. Food trucks are also able to advertise their location in real time through social media. In contrast to the old business model, today's food trucks tend to park and sell from one location for hours at a time. Recurring street food market events where communities can sample several food trucks at one location are also now held throughout the San Diego area, which has contributed to their popularity. Staff has had inquiries from the public about whether food trucks are allowed in the City. The City's existing regulations are general in nature and address mobile vending operations in the City's right-of-way, but do not allow mobile vending on private property. The popularity of food trucks, State law and street food in general, has caused many cities to reconsider their regulations. The proposed amendment to the Municipal Code would allow mobile food trucks to operate on private property within certain zones subject to an appropriate use permits or during special events, while protecting the health, safety, and general welfare of the community. This would allow staff to evaluate impacts of food trucks in the City, and the proposed location and operational requirements could be further refined in the future should Council direct staff to expand the scope of the provisions. Although amendments to the Municipal Code do not require Planning Commission approval, staff feels that Planning Commission input is warranted due to the potential land-use implications.

**EXISTING CITY REGULATIONS:**

The Escondido Municipal Code (EMC) currently allows for 'Mobile Vendors/Peddlers' to operate within the City right-of-way, but does not contain specific location and operational requirements for mobile food vendors/trucks nor does it allow them on private property. Chapter 28 (Traffic) Sections 28-161 and 162 of the EMC restricts standing or parking by peddlers or vendors on city streets to a maximum

of ten minutes, and a permit is required from the City's traffic engineer for any lunch wagon/vehicle. Food trucks also are required to comply with applicable city, state and federal regulations, and must obtain any necessary permits, including a business license (if required by a city or county), environmental health permits from every county they operate in to ensure food safety and handling and a Seller's Permit from the California Board of Equalization. The Escondido Zoning Code (Section 33-332) does allow food sales from push carts on private property within commercial zones subject to the appropriate administrative permit.

#### HEALTH AND SANITATION (County Health Department):

Food truck vendors and employees are subject to the California Retail Food Code, which provides a system of prevention and safeguards designed to address public health and sanitation concerns. Any operation where food is provided for human consumption at retail (whether restaurants or food trucks or pushcarts) is subject to the California Retail Food Code. Food trucks are required to obtain permits and approvals from the environmental health departments of each county within which they operate. The San Diego County Department of Environmental Health (DEH) is responsible for ensuring that food vendors operating throughout the County are complying with the California Retail Food Code. Other notable California Retail Food Code requirements for food trucks include:

- Any vendor stopped and operating for more than an hour must obtain permission to use an "approved" restroom facility within 200 feet travel distance. "Approved" is defined as acceptable to the enforcement agency (county health departments) based on a determination of compliance with applicable laws, or current public health principles and standards that protect public health; and
- Food trucks are required to operate out of a commissary, where food preparation and storage, truck/pushcart maintenance and storage and disposal of waste occur.

#### PUBLIC INPUT:

A public workshop was conducted by City staff on November 28, 2012 to discuss potential changes to the city code to accommodate food trucks and solicit feedback. The meeting primarily was attended by food truck vendors and local restaurant owners. Food truck operators/owners indicated they were interested in operating in Escondido, especially at special events and felt their presence would offer a unique service to the community. They indicated that Escondido does not have the same type of demand as larger downtown urban centers (such as San Diego and Los Angeles) or certain beach communities, but the current demand has been to serve larger office and industrial type complexes (typically breakfast and lunch) and multi-family developments (dinner) as well as special events. Some restaurant owners have expressed concern regarding the presence of food trucks within areas that have established restaurants, and feel these mobile restaurants would cut into their business at a time when many brick and mortar restaurants are struggling. Restaurant owners have indicated that they are required to invest a great sum of capital into their businesses and have a stake in the local community vs. a mobile food truck that can drive in during peak hours and take advantage of brisk business and then leave, which is called cherry picking.

An online food truck survey also was conducted with more than 220 responses. Most survey respondents identified themselves as Escondido residents. Approximately 60 respondents indicated they work in Escondido. The results generally show a strong interest in the increased presence of food trucks in the City, especially at organized food truck events. Respondents stated food trucks should primarily be located in the commercial and industrial areas, but restricted in residential areas and near schools. The survey generally was split regarding the use of public or private property. While the survey results should be considered cautiously, the survey served to increase awareness of the range and complexity of views the community has regarding this subject.

## STATE LAW AND CITY AUTHORITY

**Public Streets** – State law and the current legal landscape surrounding vehicular vending have made it challenging for cities to regulate food trucks on the public street. The California Vehicle Code (CVC) limits local parking regulations except as expressly authorized by state 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” for reasons of public safety. Several cities have been challenged when regulations were aimed at protecting “brick and mortar” business establishments from competition. Parking time limitations for food trucks, usually for brief periods of time (the “ice cream truck exemption”) have also been challenged where the ordinance had no clear public safety justifications.

**Private Property/Public Sidewalk** – The CVC occupies the field concerning regulation of public streets, but cities retain local authority to regulate public sidewalks, and under its police powers, to regulate private property in the interest of protecting public health, safety and welfare. In creating new regulations, restrictions on private property may have to be balancing against the risk of forcing food trucks onto the public street where regulations may be less stringent.

## ENVIRONMENTAL REVIEW:

The proposal is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15061(b) “General Rule.” Section 15061 (b)(3) of Chapter 3, Title 14 of the California Code of Regulations (the CEQA Guidelines) describes the General Rule that CEQA only applies to projects which “have the potential for causing a significant effect on the environment; 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, the activity is not subject to CEQA.” Approval of the proposed amendment to the Escondido Municipal Code does not approve any development project and the proposed amendment would not individually or cumulatively result in the possibility of creating significant effects on the environment. Therefore, the proposed amendment to the Municipal Code is not subject to CEQA under the General Rule and no further environmental review is necessary.

## DISCUSSION:

Street vendors attract people and attention, and crowds have the potential to create vehicular and pedestrian traffic hazards. Some believe that street vendors are unsightly and threaten the viability of off-street establishments. Others believe that food vendors can perform a social function by activating underutilized public spaces, providing a desired service, promoting socialization and creating a sense of community. While some cities have integrated food trucks and other street vendors into their communities, others have struggled with the challenges their presence brings. Several cities have been sued by the food truck industry on the grounds that local regulations to restrict the operation of food trucks were designed to protect typical brick-and-mortar restaurants from competition. The proposed amendment to the Municipal Code would allow food trucks on private property within commercial zones subject to the issuance of an appropriate use permit issued by the Director of Community Development, with operational and location conditions tailored for each specific request. Food trucks also would be allowed at breweries/wineries in industrial and agricultural zones. The City Manager’s Office also would be able to authorize mobile food trucks within the City right-of-way and on City property subject to a Special Event Permit. The proposed amendment language is attached as Exhibit ‘A.’

Respectfully Submitted



Jay Paul  
Associate Planner

# Exhibit 'A'

## Proposed Language (Municipal Code)

AZ12-0007

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. Definition**

Mobile food facility means any vehicle used in conjunction with a commissary or other permanent food facility, as those terms are defined in the California Retail Food Code (Cal. Health and Safety Code sections 113700 et seq.), upon which food is sold or distributed at retail.

Operator means the person who owns, manages, or vends from a mobile food facility.

#### **Sec. 16-406. Business License and Use Permit Required.**

(a) It shall be unlawful to operate a mobile food facility without a business license and a copy of the authorized use permit issued by the City of Escondido, unless otherwise authorized by state or federal law.

(b) The mobile food facility operator shall maintain a City of Escondido business license for each mobile food facility.

(c) The use permit shall be obtained by the person who has a possessory interest in the property to be used by the mobile food facility.

(d) When open for business, the mobile food facility operator shall post a copy of the business license and the use permit in an area open to public view.

#### **Sec 16-407. Use permit requirements.**

(a) The Director of Community Development shall establish policies and procedures to issue permits to a property owner or designated agent that are consistent with this ordinance and all state and federal law.

(b) The Director or authorized representative may issue a use permit when the proposed temporary use will not have a significant impact on the permitted permanent uses provided in the Escondido Zoning Code or the surrounding community.

(c) An application for a use permit shall be submitted on an application form secured from the Director. The application shall provide the information necessary for review of the application by appropriate city departments, and shall include the name, address, telephone number and signature of both the property owner or designated agent and the Mobile Food Facility operator, and the project location. A separate use permit shall be required for each Mobile Food Facility and shall be good for one year.

(d) Use permits may be granted for mobile food facilities in agricultural or industrial zones and as an accessory use to beer or wine manufacturing businesses.

(f) An approved special event permit or facility use permit from the City of Escondido shall exempt the mobile food facility operator from the requirements of this Article.

**Sec. 16-408. Permit Revocation.** The Director of Community Development may revoke any use permit with good cause.

**Sec. 16-409. Operational Requirements.** Violation of any provision in this section shall be grounds for immediate revocation of a use permit.

(a) Parking of a mobile food facility at any location (inclusive of set-up and clean-up times) shall be limited to 4 hours daily for 5 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 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 or allow disposal 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 a part of the use permit application.

(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 addressed in a use permit and 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 specified in the use permit.

(i) Signs for a mobile food facility shall be limited to that on the vehicle only.