

ORDINANCE NO. 1130

AN ORDINANCE OF THE CITY OF LOS BANOS AMENDING ARTICLE 36 CHAPTER 3 TO TITLE 9 OF THE LOS BANOS MUNICIPAL CODE RELATING TO MOBILE FOOD VENDING

WHEREAS, the Planning Commission directed the Community and Economic Development Department to prepare a proposed update the City's current mobile vendor ordinance;

WHEREAS, the Planning Commission conducted a duly noticed public hearing on the proposed ordinance on March 25, 2015 and April 22, 2015 at which time all individuals desiring to comment on the proposed ordinance were heard and on May 13, 2015 the Planning Commission recommended that the City Council adopt the proposed ordinance amending Article 36 to Chapter 3 Title 9 of the Los Banos Municipal Code;

WHEREAS, the City Council conducted a duly noticed public hearing on the recommended changes to the Zoning Code pertaining to mobile vending on June 3, 2015, July 1, 2015, and August 5, 2015 at which time all individuals desiring to comment on the proposed amendments were heard.

THE CITY COUNCIL OF THE CITY OF LOS BANOS DOES ORDAIN AS FOLLOWS:

Note: "Existing" as referred to in this Ordinance shall mean the relevant Article or Section in existence prior to amendment or renumbering.

Section 1. The title to Article 36 of Chapter 3 Title 9 of the Los Banos Municipal Code is amended to read as follows:

Article 36. Mobile Food Vending

Section 3. Section 9-3.3601 is amended to read as follows:

Sec. 9-3.3601 Purpose.

The general purpose of this Article is to promote the health, safety, comfort, convenience, prosperity and general welfare of the citizens, businesses and visitors of the City of Los Banos by requiring that new and existing mobile food vendors provide the community and customers with a minimum level of cleanliness, quality, safety and security. It is the purpose and intent of the City Council in enacting this Article, to provide mobile food vendors with clear and concise regulations to prevent safety, traffic and health hazards, as well as to preserve the peace, safety and welfare of the community.

Section 4. Section 9-3.3602 is amended to read as follows:

Sec. 9-3.3602 Definitions.

(a) "Mobile food vending unit" shall mean any vehicle, trailer, pushcart, motorized food wagon, stand, tent; or structure; not affixed to a permanent foundation, with or without wheels, which may be moved from one place to another under its own power or by other means.

(b) "Mobile food vendor" shall mean any person who owns, controls, manages or is otherwise engaged in the business of selling prepared, pre-packaged or unprepared, unpackaged food or foodstuffs of any kind, from a mobile vending unit on private or public property.

(c) "Persons" shall mean any person, firm, partnership, association, corporation, or business entity, and includes, but is not limited to, owners, operators, drivers, employees, agents, lessors and lessees of a mobile vending unit.

(d) "Vend" or "vending" shall mean the sale, offer for sale, soliciting, preparation, display, barter, or exchange, of prepared, pre-packaged or unprepared, unpackaged food or foodstuffs of any kind, from a mobile food vending unit on private or public property.

Section 5. Section 9-3.3603 is amended to read as follows:

Sec. 9-3.3603 Permit required.

No person may vend from a mobile food vending unit in the City without first obtaining and having in his or her possession a mobile food vendor permit issued by the City in accordance with this Article. No permit granted herein shall confer any vested right to any person or business for more than the permit period. All mobile food vendors subject to this Article shall comply with the provisions of this Article as they may be amended hereafter.

Section 6. Section 9-3.3604 is amended to read as follows:

Sec. 9-3.3604 Permit period.

Except as otherwise provided herein, all mobile food vendor permits issued by the City shall expire one year from the date of issuance.

Section 7. Section 9-3.3605 is amended to read as follows:

Sec. 9-3.3605 Application for permit to operate.

A person desiring to engage in a mobile food vendor operation shall submit a written application for a permit to operate in a form acceptable to and with all supporting information required by the Community and Economic Development Department. Such application shall be accompanied by a nonrefundable, nontransferable application fee in an amount as established by resolution of the City Council. Any such permit shall be required to be renewed annually and a separate nonrefundable, nontransferable application fee shall be paid yearly for such renewal application. Mobile food vendors must have the permit in their possession when vending. Permits to operate are nontransferable and shall be specific to an identified vending unit(s).

(a) A background check through the Los Banos Police Department must be obtained for the mobile food vendor and each person operating or vending out of the mobile food vending unit.

(b) Every mobile food vendor operator shall obtain a City of Los Banos Business License.

(c) As part of the permit to operate application, the mobile food vendor shall provide the following:

(1) Mailing address for notification purposes. If during the term of the permit, the permit holder has any change in the mailing address submitted on the original or renewal application, the permit holder shall notify the Community and Economic Development Department of such change in writing within ten (10) business days thereafter. Failure to provide updated contact information shall be grounds for permit suspension;

(2) Legal names of the mobile food vendor and all persons operating or vending out of the mobile food vending unit;

(3) Proof of current vehicle registration (for mobile food vending unit if applicable);

(4) Four (4) photographs (showing different exterior views) of each mobile food vending unit;

(5) Dimensioned sample or rendering of proposed signage;

(6) A copy of a current Merced County Environmental Health permit;

(7) Proof of automobile insurance as required by the Vehicle Code (for mobile vending unit if applicable);

(8) No person shall engage in, conduct or carry on the business of a mobile food vendor in the public right of way or on public property unless there is on file with the Community and Economic Development Department, in full force and effect at all times, documents issued by an insurance company authorized to do business in the State of California evidencing that the operator is insured (and naming the City as an additional insured) under a liability insurance policy providing minimum coverage of One

Million and No/100ths (\$1,000,000.00) Dollars for injury or death arising out of the operation of the mobile food vending unit;

(9) If the mobile food vendor is operating in the public right of way or on public property the mobile food vendor shall be required to execute a hold harmless agreement in a form approved by the City.

(10) If the mobile food vendor is operating on private property, the mobile food vendor shall provide the following:

(A) An affidavit in a form approved by the City from the property owner (if other than self) permitting the mobile food vendor to locate on the site;

(B) A site plan, including sufficient parking for the primary use and the mobile food vendor, for all proposed stationary location(s). Parking spaces shall be marked as required by zoning regulations;

(C) An affidavit from the business or location providing the required restroom facilities for food service workers, stating the hours that those facilities are being made available.

(d) The following may constitute grounds for denial of a permit to operate or renewal application:

(1) The proposed mobile food vending activity does not comply with all applicable laws including, but not limited to, the applicable building, zoning, housing, fire, safety and health regulations;

(2) The applicant is unable to obtain a business license due to a criminal background check or Fire Department approval;

(3) The applicant has, within three (3) years immediately preceding the application filing date, had a permit to operate, vending license or similar permit suspended or revoked in another California jurisdiction;

(4) The applicant has knowingly made a material misstatement in the application for a permit to operate;

(5) Failure to obtain clearance from Merced County Environmental Health.

(e) The Planning Commission shall be the decision-making authority for any initial application of a permit to operate. The Community and Economic Development Director or designee shall be the decision making authority for any renewal application of a permit to operate and/or temporary administrative mobile food vendor permit.

Section 8. Section 9-3.3606 is amended to read as follows:

Sec. 9-3.3606 Location.

(a) Public Right of Way. A mobile food vendor may locate in the public right-of-way subject to the following conditions:

(1) A mobile food vendor shall not operate within three hundred (300') feet of any church, school grounds, park (except as set forth in Section 9-3.3608(b)), playground or City-operated recreation center;

(2) A mobile food vendor shall not operate within one hundred (100') feet of any street intersection;

(3) In addition to the above, a mobile food vendor must comply with the following regulations, depending upon the type of use in which it is located:

(A) Residential Zones.

(i) In a residential zone, a mobile food vendor shall move not less than four hundred (400') feet at least every ten (10) minutes and may not return more than three (3) times to a previous location or within four hundred (400') feet of a previous location on the same calendar day.

(ii) Permitted hours of operation are from 9:00 a.m. to 7:00 p.m.

(iii) A mobile food vendor may not be located within four hundred (400') feet of another mobile food vendor.

(B) Commercial Zones.

(i) In a commercial zone, a mobile food vendor shall move not less than four hundred (400') feet at least every two (2) hours and may not return more than three (3) times to a previous location or within four hundred (400') feet of a previous location on the same calendar day.

(ii) Permitted hours of operation are from 8:00 a.m. to 9:00 p.m.

(iii) If a mobile food vendor is located in a commercial zone and is within one hundred (100') feet of a residence, it shall comply with the requirements listed above for residential zones.

(C) Industrial Zones.

(i) In an industrial zone, a mobile food vendor may operate eighteen (18) hours a day or as long as businesses within three hundred (300') feet of the mobile food vendor location are open, whichever is shorter.

(ii) If a mobile food vendor is located in an industrial zone and is also within one hundred (100') feet of a residence, it shall comply with the requirements listed above for residential zones.

(D) Construction Zones and Business Parks. Permitted days and hours of operation are Monday through Saturday from 8:00 a.m. to 5:00 p.m.

(4) Except as set forth in Section 9-3.3608(b) no mobile food vendor shall be located or maintained on public property, including bicycle pathways, walking trails, public parks or inconsistent with any other City regulations;

(5) Shall not interfere with access, driveways, aisles, circulation or fire lanes and hydrants and shall not operate in a place where the operation will create an unsafe condition; and

(6) Shall comply with the requirements of the Merced County Environmental Health Department.

(b) Private Property. A mobile food vendor may locate on private property subject to the conditions as follows:

(1) Be incidental to a primary use with a valid business license, if required; a mobile vending unit shall not be the primary use of a parcel. Mobile food vending units shall not be permitted as an accessory use to a standalone parking lot;

(2) Be located in a commercial or industrial zoning district. Mobile food vendors shall not be located on private property in a residential zoning district, except as set forth in Section 9-3.3609(c);

(3) Not be located on a vacant parcel;

(4) Be located on pavement per City standards;

(5) Not utilize, or be located on, parking spaces required for the primary use. At least two (2) onsite parking spaces, in addition to those required for the primary use, shall be provided for the mobile food vending unit operation;

(6) Not interfere with access, driveways, aisles, circulation or fire lanes and hydrants and shall not operate in a place where the operation will create an unsafe condition;

(7) Comply with the requirements of the Merced County Environmental Health Department;

(8) Not interfere with pedestrian movement or create a hazard for pedestrians; and

(9) One mobile food unit shall be allowed for each 1000 square feet of paved level area not to exceed three (3) mobile food vending units operating on the same parcel at the same time unless in connection with a special event permit.

Section 9. Section 9-3.3607 is amended to read as follows:

Sec. 9-3.3607 Operational requirements.

(a) Mobile Food Vending Unit.

(1) The mobile food vendor shall display, in plain view and at all times, current permits and licenses and the vendors permit shall be affixed to the mobile vending unit.

(2) While vending, drive wheels of the mobile food vending unit shall be chocked in such a manner as to prevent movement.

(3) The mobile food vending unit shall be entirely self-sufficient in regards to gas, water and telecommunications. All mobile food vending units that use a generator, propane, compressed natural gas, open flame, heat source, or appliance to operate the mobile food vending unit shall obtain Fire Department approval and shall be subject to inspection by the Los Banos Fire Department prior to issuance or renewal of a business license involving use of the mobile food vending unit. All mobile food vending units shall comply with California Fire Code, California Code of Regulations, and California Mechanical Code. Should any utility hook-ups or connections to on-site utilities be used or required, the mobile food vendor shall be required to apply for appropriate permits or receive approval by the appropriate City department to ensure building and public safety and consistency with applicable building and zoning regulations.

(4) The mobile food vendor shall not discharge items onto the sidewalk, gutter, storm drainage inlets or streets.

(5) Any person engaged in mobile food vending shall wear, on their person, identification with a picture and name while vending. Such identification is to be obtained from the Los Banos Police Department.

(b) Appearance of Site.

(1) The site shall be maintained in a safe and clean manner at all times.

(2) No tables, chairs, fences, shade structures or other site furniture, (permanent or otherwise) or any freestanding signs shall be permitted in conjunction with the mobile food vendor.

(3) Any site improvements required for mobile food vendor operations shall require application for the appropriate permits to ensure building and public safety and consistency with applicable building and zoning regulations.

(4) Exterior storage of refuse, equipment or materials associated with the mobile food vendor is prohibited.

(c) Amplification. While moving, a mobile food vending unit may utilize amplified music, provided that such music shall not exceed eighty (80) decibels at ten (10') feet from the source as measured by a sound level meter. Any amplified music shall cease while the mobile food vending unit is stopped for vending purposes.

(d) Sanitation.

(1) All mobile food vendors operating a mobile food facility as defined by the Health and Safety Code shall operate out of a commissary pursuant to Health and Safety Code Section 114295.

(2) All mobile food vending units shall be equipped with refuse containers large enough to contain all refuse generated by the operation of such a unit, and the vendor of the mobile unit shall pick up all refuse generated by such operation within a twenty-five (25') foot radius of the vehicle before such unit is moved. No mobile food vendor shall dispose of any trash or refuse in any such public or private trash receptacle other than a trash receptacle owned, operated or otherwise provided by and under the control of such vendor.

(3) All mobile food vendors operating a mobile food facility as defined by the Health and Safety Code shall comply with Health and Safety Code Section 114315, as may be amended, regarding the availability of adequate toilet facilities for use by food service personnel.

(e) Safety and Security.

(1) No vending shall be permitted except after the mobile food vending unit has been brought to a complete stop and parked in a lawful manner.

(2) The mobile food vendor shall install signage in a visible location on the mobile vending unit indicating that loitering is not permitted.

(3) The mobile food vendor shall enforce the no loitering rule.

Section 10. Existing Section 9-3.3608 is renumbered to 9-3.3609 and amended to read as follows:

Sec. 9-3.3609 Exemptions.

The following shall be exempt from the requirements of this Article:

(a) Any person engaged in vending where such person has been authorized by the City of Los Banos to engage in such activity by a special event permit, in connection with a certified farmer's market, or other permit or entitlements issued by the City of Los Banos.

(b) Any person delivering any goods by vehicle where such goods have been ordered in advance for such delivery from any business located at a permanent location and which goods are being delivered from such location to the customer by vehicle, regardless of the point of sale.

(c) Any person on private property in a residential zone operating solely for private catering purposes when (i) the mobile food vending unit is parked entirely on private property; (ii) service is limited to the guests of the catered event; (iii) no admission is charged for attending the event; and (iv) no payment is required from the guests for individual orders from the mobile food vending unit.

Section 11. Existing Section 9-3.3609 is renumbered to 9-3.3610 and amended to read as follows:

Sec. 9-3.3610 Application of other laws and regulations.

(a) The provisions of this Article prohibiting the stopping or parking of a vehicle shall apply at all times or at those times specified by this Article, except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

(b) The provisions of this Article imposing a time limit on stopping or parking shall not relieve any person from the duty to observe other more restrictive provisions of the Vehicle Code, this Code or any other ordinances of the City, prohibiting or limiting the stopping or parking of vehicles in specified places or at specified times.

(c) The provisions of this Article shall not relieve any person from the provisions of the Health and Safety Code pertaining to the regulation of Mobile Food Facilities.

Section 12. Existing Section 9-3.3610 is renumbered to 9-3.3611 and amended to read as follows:

Sec. 9-3.3611 Suspension/revocation of permit to operate.

(a) Violation and Noncompliance. The Community and Economic Development Director or designee may refuse to renew a permit or may revoke or suspend an existing permit on the grounds that the permit holder has failed to comply with the permit conditions or other requirements of this Article. If a suspended permit lapses during the suspension period, a new application must be filed at the end of the suspension period. In any such case, the permit holder shall have the right to appeal in the time and manner set forth in this section.

(b) Revocation and Suspension of Permit to Operate. When the City concludes that grounds for denial, suspension, revocation or refusal to renew a permit to operate exist, he or she shall serve the applicant or permit holder, either personally or by certified mail addressed to the business or residential address of applicant or permit holder, with a notice of denial or notice of intent to suspend, revoke or refuse to renew permit.

This notice shall state:

- (1) The reasons for the proposed action;
- (2) The effective date of the decision;
- (3) The right of the applicant or permit holder to a hearing; and
- (4) That the decision will be final if no hearing request is filed within five (5) business days.

(c) Hearings and Appeals. Hearings and appeals of the decision of the Community and Economic Development Director or designee or the Planning Commission shall be conducted in the same manner provided by Sections 9-3.2330 through 9-3.2334.

Section 13. Existing Section 9-3.3611 is renumbered to 9-3.3612 and amended to read as follows:

Sec. 9-3.3612 Applicability of ordinance to existing businesses.

(a) The provisions of the ordinance codified in this Article shall be applicable to all mobile food vendors established after the effective date of the ordinance.

(b) All existing mobile food vendors operating within the City shall be required to obtain a permit to operate and otherwise comply with this Article upon the expiration of a current business license and/or application of a renewal of a current business license.

Section 14. A new Section 9-3.3608 is added to read as follows:

Sec. 9-3.3608 Temporary Administrative Mobile Food Vendor Permit.

(a) A mobile food vendor that otherwise meets all the requirements of this Article shall be eligible to obtain temporary administrative mobile food vendor permit issued over the counter by the Community and Economic Development Department for the temporary operation of a mobile food vending unit not to exceed one (1) day per any one week period. A mobile food vendor shall be eligible for a maximum of six (6) temporary administrative mobile food vendor permits per twelve month period.

(b) Notwithstanding the provisions of this Article, a temporary administrative mobile food vending permit may allow the mobile food vending unit, not to exceed two

units at the same time, to be located in the drive lane adjacent to the northern boundary of Pacheco Park except immediately before and after and during the time of a special event at the park subject to such other reasonable conditions as deemed appropriate by the Community and Economic Development Director.

Section 15. The provisions of this Article as enacted in this Ordinance shall apply to all unattended donation boxes located within the City of Los Banos as of the effective date of this Ordinance. All persons who have one or more unattended donation boxes located on their real property as of the effective date of this Ordinance shall have sixty (60) days from that date to file an application for a permit as provided for in this Article. Any person who has filed a timely application for a permit shall not be subject to the provisions of this Article relating to unattended donation boxes until a permit is issued or denied to the applicant.

Section 16. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 17. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

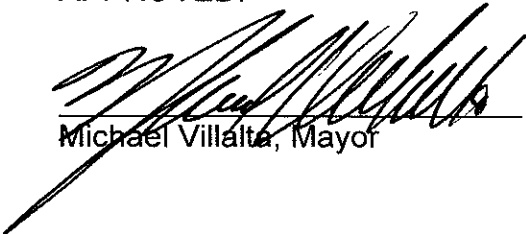
Section 18. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Silveira and seconded by Council Member Faria on the 1st day of July, 2015.


Passed on the 5th day of August, 2015 by the following vote:

AYES: Council Members Faria, Lewis, Silveira, Stonegrove, Mayor Villalta
NOES: None
ABSENT: None

APPROVED:


Michael Villalta, Mayor

ATTEST:


Lucille L. Mallonee, City Clerk