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January 20, 1988

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Law and Legislation Committee
City Council Chambers
Sacramento, California 95814

RE: AN ORDINANCE REGULATING FOOD
VENDING VEHICLES

SUMMARY

This report presents a proposal to regulate food vending vehicles, including ice cream trucks. The regulations are modeled upon existing City regulation of taxis and tow cars.

BACKGROUND

Councilmember Lynn Robie asked the City Attorney's Office to prepare an ordinance which would regulate ice cream trucks and other food vending vehicles which have proliferated in certain residential neighborhoods. Concerns include safety, sanitation and noise.

The proposed ordinance follows the models provided by our existing taxi and tow car regulations. Each vending vehicle and each driver would need a City permit.

The permit process comprises several elements:

1. Provision of liability insurance for each vehicle.
2. Compliance with Health Department regulations for sale of food.
3. An opportunity to obtain conformance with City zoning regulations concerning storage of vehicles.

4. Inspection of vehicles for Vehicle Code equipment requirements.

The ordinance also imposes hours-of-operation restrictions on vending activities, 5:00 a.m. to 8:00 p.m. during April through October, and 5:00 a.m. to 6:00 p.m. during November through March. These limits were selected to coincide generally with dusk.

The registration program would be administered by the Revenue Division. A request to set application and annual renewal fees at approximately \$80.00 per vehicle and \$35.00 per driver will be presented to the Budget and Finance Committee by the Revenue Manager if your Committee recommends adoption of the ordinance.

The proposed regulations affect "food vending vehicles", defined as "any motor vehicle from which any type of food or beverage is sold or offered for sale directly to any consumer." Excluded from regulation are vehicles which sell only to employees of business establishments during their normal working hours, and only between 5:00 a.m. and 4:00 p.m., and vehicles which deliver fluid milk products to home delivery customers. These excluded vehicles are not generally a neighborhood problem.

RECOMMENDATION

It is recommended that the Law and Legislation Committee review the proposed ordinance and make a recommendation to the full Council.

Respectfully submitted,

JAMES P. JACKSON, City Attorney



DIANE B. BALTER
Deputy City Attorney

DBB:je

February 11, 1988
Law and Legislation
All Districts

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE ADDING ARTICLE V TO CHAPTER 42 OF THE SACRAMENTO CITY CODE, RELATING TO FOOD VENDING VEHICLES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Article V is hereby added to Chapter 42 of the Sacramento City Code, to read as follows:

ARTICLE V. Food Vending Vehicles

§42.100 Food Vending Vehicle Defined.

"Food vending vehicle" shall include any motor vehicle from which any type of food or beverage is sold or offered for sale directly to any consumer; provided, however, that "food vending vehicle" shall not include any such vehicle which sells or offers to sell food or beverage only to employees of various business establishments during their normal working hours, and in no event between the hours of 4:00 p.m. of one day and 5:00 a.m. of the next day, or any such vehicle which delivers fluid milk products to home delivery customers.

§42.101 Food Vending Vehicle Permit Required.

It shall be unlawful for any person to engage in the business of operating a food vending vehicle without first obtaining a food vending vehicle permit for each food vending vehicle as required by this article.

§42.102 Vehicle Permit Application.

Application for a food vending vehicle permit shall be filed with the director and shall contain the following:

- (a) The individual and business name, address, and telephone number of the permit applicant.

- (b) Written evidence that the applicant is an owner, lessee or holder of a similar interest in the food vending vehicle.
- (c) The name and address of all legal and registered owner(s) of the food vending vehicle, and each person with a financial interest in the business which operates the food vending vehicle.
- (d) The state vehicle license number of the food vending vehicle.
- (e) A city certificate of insurance, establishing compliance with Section 42.105.
- (f) A certificate from the Sacramento County Health Department establishing that the vehicle complies with all regulations relating to sale of food from a motorized vehicle.
- (g) The address where the food vending vehicle is stored when not in use.
- (h) For each person with a 10% or greater financial interest in the business which operates the food vending vehicle, a list, signed under penalty of perjury, of each conviction of such person and whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the person was convicted. A person who acquires a 10% or greater financial interest in the business which operates the food vending vehicle during the life of the permit issued pursuant to this article shall immediately so notify the director and comply with this subsection (h). Any holder of a valid food vending vehicle driver permit issued pursuant to section 42.109 shall be exempt from the requirements of this subsection (h).
- (i) An annual nonproratable, nonrefundable permit fee, as established by resolution of the city council.
- (j) Such other information as may be required by the director to further the purpose of this chapter.

§42.103 Vehicle Permit Issuance and Denial.

- (a) A food vending vehicle permit shall be issued by the director upon receipt of a complete application, as specified in Section 42.102, and after the director has:

- (1) Physically inspected the food vending vehicle to ensure compliance with Vehicle Code equipment requirements; and
 - (2) Determined that the business location and vehicle storage location, if within the City of Sacramento, comply with applicable zoning regulations and other codes.
- (b) All food vending vehicle permits shall expire on April 30 of the calendar year following the date of issuance unless sooner revoked. Application for renewal shall be filed between March 1 and March 31 for the permit period beginning the succeeding May 1.
 - (c) A food vending vehicle permit shall authorize the operation of a single food vending vehicle and shall not be transferable to any other vehicle.
 - (d) A food vending vehicle permit shall be denied by the director if he finds any of the following grounds:
 - (1) The applicant knowingly made a false statement of fact required to be revealed in the permit application.
 - (2) The information required by section 42.102 is false or incomplete.
 - (3) A person with 10% or more financial interest in the operation of the food vending vehicle has been convicted of a crime, and the time for appeal has elapsed, irrespective of the entry of a subsequent order under Penal Code Section 1203.4; or has done any act involving dishonesty, fraud, deceit, or moral turpitude with intent to substantially benefit him or herself, or another, or substantially injure another, or having the effect of substantially injuring another.

Provided, however, that the permit shall be denied upon any of the grounds specified in this subsection (3) only if, in the opinion of the chief of police, contained in a recommendation to the director, the crime or act is substantially related to the qualifications, functions or duties of a food vending vehicle owner or owner of a business which operates food vending vehicles or has substantial contact with minors. However, no person shall be denied a permit solely on the basis that he has been convicted of a felony if

he has obtained a certificate of rehabilitation under the State Penal Code Sections 4852.01, et seq., or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering a petition under Penal Code Section 4852.01, et seq.

§42.104 Posting Requirements.

- (a) There shall be carried in the food vending vehicle passenger compartment for viewing upon request of any person a copy of a valid permit issued pursuant to this article, and there shall be displayed on the vehicle window as specified by the director such permit decal as the director may provide.
- (b) There shall be displayed on each exterior side of the food vending vehicle a sign showing the name of the company or the owner or operator of the food vending vehicle. The sign shall also contain the business address and telephone number of the owner or driver. The letters of the sign shall be not less than 2½ inches in height and the lettering shall be in contrast to the color of the background upon which they are placed.

§42.105 Liability Insurance.

During the term of a permit issued pursuant to this article, the permittee or owner(s) of a food vending vehicle authorized by the permit shall maintain in full force and effect at no cost to the city a comprehensive auto and general liability insurance policy:

- (a) In an amount no less than \$300,000 single limit per occurrence; and
- (b) Issued by an admitted insurer or insurers as defined by the California Insurance Code; and
- (c) Providing that the City of Sacramento, its officers, employees and agents are to be named as additional insured under the policy; and
- (d) Covering all losses and damages as specified in Section 42.106; and
- (e) Stipulating that the policy will operate as primary insurance and that no other insurance effected by the city or other named insured will be called on to contribute to a loss covered thereunder; and

- (f) Providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the food vending vehicle permit, without 30 days' written notice to the director prior to the effective date of such cancellation or change in coverage.

§42.106 Indemnity and Hold Harmless.

The permittee and food vending vehicle owner(s) shall assume the defense of, and indemnify and hold harmless, the city, its officers, employees and agents from and against all actions, losses, damages, liability, costs and expenses of every type and description, including but not limited to attorney fees, to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, in whole or in part, the acts or omissions of the permittee or the permittee's agents, officers or employees, directly or indirectly arising from the operation of the food vending vehicle.

The foregoing is not intended to and shall not be construed to limit any responsibility or liability that the permittee may be subjected to under other laws.

§42.107 Food Vending Vehicle Driver Permit Required.

No person shall engage in the business or employment of driving, or selling from, a food vending vehicle unless he or she holds a valid food vending vehicle driver permit issued pursuant to this article.

§42.108 Food Vending Vehicle Driver Permit Procedure.

Applications for a food vending vehicle driver permit shall be filed with the director and shall contain the following:

- (a) The name and address of the applicant;
- (b) The number of a valid state driver license issued to the applicant, authorizing the applicant to drive a food vending vehicle, and date of license expiration;
- (c) A statement of whether the applicant's state driver license has ever been revoked or suspended and, if so, the reason(s) for such revocation or suspension;
- (d) A list, signed under penalty of perjury, of each conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which applicant was convicted;

- (e) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, applicant shall state whether the same would interfere with the proper management and control of a motor vehicle;
- (f) A statement as to whether applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined in the state Health and Safety Code;
- (g) A list of all prescription medication which applicant takes on a regular or episodic basis;
- (h) An annual nonproratable, nonrefundable permit fee, as established by resolution of the city council;
- (i) Such other information as may be required by the director to further the purpose of this article.

§42.109 Driver Permit Issuance and Denial.

- (a) Except as provided in subsection (c) hereof, a food vending vehicle driver permit shall be issued by the director:
 - (1) Upon receipt of a complete application, as specified in Section 42.108; and
 - (2) After fingerprinting of the applicant by the police department, if the director so requires; and
 - (3) After submission of four recent dated portrait photographs, one to be attached to the application, one to be attached to the driver permit if issued, and two for the use of the police department.
- (b) All permits shall expire on April 30 of the calendar year following the date of issuance unless sooner revoked. A permit shall not be transferable. Application for renewal shall be submitted between March 1 and March 31 for the year beginning the succeeding May 1.
- (c) A food vending vehicle driver permit shall be denied by the director if he finds any of the following grounds:
 - (1) The applicant knowingly made a false statement of fact required to be revealed in the permit application;

- (2) Failure to comply with the requirements of Section 42.109;
- (3) The information required by Section 42.108 is false or incomplete;
- (4) The applicant has been convicted of a crime, and the time for appeal has elapsed, irrespective of the entry of a subsequent order under Penal Code Section 1203.4; or has done any act involving dishonesty, fraud, deceit, or moral turpitude with intent to substantially benefit him or herself, or another, or substantially injure another, or with the effect of substantially injuring another; or has a physical or mental disability or incapacity, or takes medication, uses alcohol or any controlled substance as defined in the state Health and Safety Code.

Provided, however, that the permit shall be denied upon any of the grounds specified in this subsection (4) only if, in the opinion of the chief of police, contained in a recommendation to the director, the crime, act, disability, incapacity or impairment from a substance consumed is substantially related to the qualifications, functions or duties of a food vending vehicle driver. However, no person shall be denied a permit solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under State Penal Code Sections 4852.01, et seq., or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering a petition under Penal Code Section 4852.01, et seq.

§42.110 Unlawful Activities.

- (a) It shall be unlawful for any person to operate a food vending vehicle for compensation with knowledge that the food vending vehicle is not authorized by a valid permit or that grounds for revocation or suspension of said permit pursuant to Section 42.111 exist.
- (b) It shall be unlawful for any food vending vehicle driver or person in the business of operating a food vending vehicle to do any of the following:

- (1) Operate a food vending vehicle for food vending purposes between the hours of 8:00 p.m. of one day and 5:00 a.m. of the following day during the months of April, May, June, July, August, September and October;
- (2) Operate a food vending vehicle for food vending purposes between the hours of 6:00 p.m. of one day and 5:00 a.m. of the following day during the months of January, February, March, November and December;
- (3) Fail to display a valid vehicle permit and permit decal, issued pursuant to this article;
- (4) Transfer or sell a vehicle permit to a vehicle other than that identified in the permit application;
- (5) Fail to carry on his or her person for display upon the request of any peace officer or a city official or employee authorized to enforce this article, a valid driver permit, issued pursuant to this article;
- (6) Transfer or sell a driver permit to any person other than the person identified in the permit application.
- (7) Broadcast any sound from any food vending vehicle which can be heard more than five (5) feet from such vehicle without first filing a registration statement with the police department and obtaining a license to broadcast according to the provisions of City Code Section 25.22, et seq.

§42.111 Suspension or Revocation of Permit.

Any food vending vehicle permit or any food vending vehicle driver permit issued hereunder may be suspended or revoked when it shall appear to the director that any activity authorized by the permit is being carried out in such a manner as to constitute a nuisance, or to be injurious to the public health, safety or welfare, or in violation of any conditions imposed upon the permit or in violation of any provision of this article, the City Code or state law, or that there exists any of the grounds which would have been grounds for denial of the permit application.

No permit shall be suspended or revoked until a hearing shall have been held by the director. Written notice of the time and place of such hearing shall be given at least five (5) days prior

to the date set for such hearing to the person to whom the permit was granted and to any other person who, at least ten (10) days prior to the hearing, shall have requested such notice. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery thereof to the persons to be notified, or by depositing the same in the U.S. mail in a sealed envelope, postage prepaid, addressed to such persons to be notified at the address appearing in the application for a permit.

The permittee may appeal the decision of the director to the City Council by filing a notice of appeal, accompanied by an appeal fee in an amount set by resolution of the City Council, within ten (10) days after the date of the director's decision. The notice of appeal shall state generally the grounds of appeal.

The City Council may appoint a hearing examiner to hear the matter pursuant to Chapter 2 of the City Code.

PASSED FOR PUBLICATION:

ENACTED:

EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK