

# PLANNING DEPARTMENT STAFF REPORT PLANNING COMMISSION MEETING MARCH 8, 2012

Prepared by: Wayne Wiley, Associate Planner

# <u>ITEM V-B:</u> DOWNTOWN CODE ORDINANCE AMENDMENT (MOBILE FOOD VENDORS) – 311 VERNON STREET – FILE # 2012PL-021 (OA-000027)

## **REQUEST**

The Planning Department proposes to amend the City's Downtown Code as it relates to Open Air Vendors. The Ordinance Amendment will modify the existing requirement of a 100 foot separation of open air vendors from a permanent business that sells the same "item" to expand to "food or beverage items" as well.

Project Applicant - City of Roseville, Planning Department

# **SUMMARY RECOMMENDATION**

The Planning Department recommends that the Planning Commission take the following action:

A. Recommend that the City Council approve the proposed Downtown Code Ordinance Amendment related to separation requirements for Open Air Vendors

## **SUMMARY OF OUTSTANDING ISSUES**

Business owners from the Historic Old town attended a Council meeting to ask that Council consider Amending the Downtown Code in response to the financial impact they are experiencing due to open air vendors and food trucks. The Historic Downtown restaurant business community has been notified of the proposed ordinance amendment. To date, no concerns have been raised regarding the proposed course of action.

# **BACKGROUND**

At the November 2, 2011 Council meeting, three business owners expressed concerns with the presence of open air vending carts and mobile food trucks operating in Historic Old Town. Their concerns were: 1) these users have an unfair advantage by not having to invest in infrastructure; 2) they are not required to pay for utilities or property taxes; and 3) they do not incur other general overhead costs associated with a permanent business. In addition, due to the down economy and the level of development in the downtown, the restaurant owners stated that there is not enough business to support the existing "bricks and mortar" businesses and mobile food vendors.

According to the downtown business owners, a mobile food truck vendor has been locating in the Historic District during the weekend evening hours. The mobile food truck vendor parks on Main Street from approximately 3pm — 3am Thursday through Saturday, when the Historic District is busiest. In addition, there is an approved hot dog vendor who is operating at the corner of Main and Lincoln Street on most weekends. Due to the presence of these facilities,

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business owners have experienced a drop in sales and have asked that the City consider adopting stricter regulations governing mobile food vendors (see Attachment 1).

### **EVALUATION**

In responding to the Downtown merchants concerns staff first examined the goals of the Downtown Specific Plan (DTSP). Staff found that in developing the plan, which was approved in 2009, the community expressed a desire for uses that activated or supported a higher level of interest drawing people to the area. This was the reason for establishing an "open air vendor" provision as part of the plan, as in highly developed urban areas this type of use becomes an integral component of the downtown. However, typically there is enough pedestrian traffic and customer base to support both bricks and mortar operations and mobile vendors.

Our downtown, while striving to reach this level of activity and a broad customer base, has not developed to a point where there is a consistent customer base. This existing environment, plus the desire to have uses that help activate downtown have been taken into consideration in formulating an approach to address this item. Accordingly, based on the existing condition of the Downtown, our research of other jurisdictions, and the laws governing traffic within the public right of way, staff recommends two different approaches for addressing the concerns of the Downtown merchants as they relate to open air vendors (food carts) and mobile food truck vendors.

Through our research, staff found that many cities require open air vendors (food carts) to secure a Business License, County Health Department Permit, and Zoning Clearance. Mobile food truck vendors have similar Business License and County Health Department requirements; however, operating restrictions governing them in the public right of way vary from city to city. This is in part due to some cities disregarding the California Vehicle Code (CVC). The CVC is the primary mechanism that is currently in place to regulate food trucks. This is a State law that requires, "that no vehicle be governed any differently by the traffic laws in place for an area." As such, several lawsuits have been filed throughout California by the Mobile Food Vendors Association regarding "illegal" restrictions being placed on mobile vendors.

Staff finds the City's current approach to regulating mobile food truck vendors appropriate based on the limited number of food trucks that frequent Downtown Roseville, and State law, which limits local jurisdictions governing ability. As mentioned above, prohibiting mobile food truck vendors could potentially result in legal action as several cities throughout California are currently going through litigation regarding the limitations and restrictions placed on these uses. Therefore, staff recommends no change to the City's current policy regarding mobile food truck vendors. However, to better accommodate the "bricks and mortar" businesses, staff does recommend modifying the existing standards for open air vendors (food carts).

The Downtown Code currently allows open air vendors (food carts) with approval of a Zoning Clearance (ZCC) and an Encroachment Permit, if located in the public right of way. Prohibiting open air vendors (food carts) from the Historic Downtown would be counter to the pedestrian oriented development the Downtown Specific Plan encourages. However, there are additional regulations placed on vendors which require them to locate at least 200 feet from another vendor and 100 feet from a permanent business whose primary business is selling the same "item". To better accommodate the "bricks and mortar" businesses, staff recommends modifying the existing requirements of a 100 foot separation from a permanent business that sells the same "item" to include "food or beverage items" as well. As such, the Downtown Code will need to be amended to reflect this modification.

#### PROPOSED AMENDMENT

The pertinent regulations addressing open air vendors (food carts) separation requirements are included in the Downtown Code. The following evaluation identifies the section of the code that

requires modification to implement the proposed amendment. The proposed revisions are indicated in strikeout / <u>double underline</u> format in Exhibit A and as noted below:

# Section 7.8.4 Open Air Vending Facilities

### Existing Provision

#### D. General

1. The use shall not be within 200 feet of another vending facility, or within 100 feet of a permanent business whose primary business is selling the same item (e.g. flowers, hot dogs);

# Proposed Text Revision

#### D. General

1. The use shall not be within 200 feet of another vending facility, or within 100 feet of a permanent business whose primary business is selling <u>similar items</u> (e.g. food and beverage items);

The established open air vendor that is currently operating consistent with the current code requirements would not be affected by the proposed modification, and could continue to operate until expiration of their existing permit. Upon expiration on August 15, 2012, they will become subject to this new regulation and would have to relocate. The proposed regulations would apply to new vendors who wish to locate in the area regulated by the Downtown Code.

In addition to the above noted amendment, staff finds this an appropriate opportunity to make other minor text changes to the code sections pertaining to open air vending facilities. As such, staff proposes text changes to remove the requirement that open air vendors be located on improved private property to note any improved property. The proposed revisions are indicated in strikeout / <u>double underline</u> format in Exhibit A and as noted below:

#### Existing Provision

#### C. Permits Required

The use shall be on improved private property and obtain a Zoning Clearance.... (Improved private property shall be defined as...)

#### Proposed Text Revision

# C. Permits Required

The use shall be on improved <u>private</u> property and obtain a Zoning Clearance... (Improved <u>private</u> property shall be defined as...)

Open Air vendors are allowed on improved private and public property with the approval of a Zoning Ordinance and the proposed amendment is provided as clarification.

#### **CONCLUSION**

Staff finds the proposed amendment to the Downtown Code consistent with the intent of the Specific Plan, while also addressing the Historic District business owners concerns. With respect to mobile food truck vendors, the City is limited in imposing additional restrictions on these vendors and as such, does not recommend any additional changes to the current policies.

#### **ENVIRONMENTAL DETERMINATION**

The California Environmental Quality Act (CEQA) does not apply to activities that will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines §15061(b) (3)). The proposed Ordinance Amendment pertaining to open air vendors does not have the potential for a significant environmental effect, and therefore is not subject to CEQA.

# **RECOMMENDATION**

The Planning Department recommends that the Planning Commission take the following actions:

**A.** Recommend that the City Council approve the proposed Downtown Code Ordinance Amendment

# **ATTACHMENTS**

- 1. Downtown Merchants Letter to Council
- 2. Surrounding Jurisdiction's Summary

#### **Exhibit**

A. Downtown Code Text Amendment (redline/strikeout)

<u>Note to Applicant and/or Developer:</u> Please contact the Planning Department staff at (916) 774-5276 prior to the Commission meeting if you have any questions on any of the recommended conditions for your project. If you challenge the decision of the Commission in court, you may be limited to raising only those issues which you or someone else raised at the public hearing held for this project, or in written correspondence delivered to the Planning Director at, or prior to, the public hearing.

Nov 2, 2011 To the City of Roseville, City Councilmember's

The issue we would like the council to address is the lack of a specific ordinance that governs Mobile Food Vendors and Open Air Vendors in Downtown Historic Roseville.

The reason we are requesting council involvement is due to the financial impact our businesses are currently experiencing due to several new unregulated vendors that have begun operation in the Historic Downtown area.

More specifically, the last two Saturdays Oct 22 and Oct 29 there has been an open-air vendor selling hot dogs and a food-vending vehicle situated at 101 Main Street. Since these vendors have begun operation, we have seen our revenue decline by 65% on both of these dates. For example, Smokin Hot Dog will usually generate \$250 to \$300 dollars in revenue on a Saturday night but generated less than \$100.00

Regarding the Food Vending Vehicles, according to the City Attorney, the only ordinances in place are that the vehicle vendors cannot be within 150 ft. of any school and the vendors can park in one location for 72 hours.

We are asking the City of Roseville to consideration adopting the Sacramento City Code Chapter 5.68 Food Vending Vehicles and Chapter 5.88 Food Outdoor Vending. (Can be found at, <a href="http://www.qcode.us/codes/sacramento/view.php?topic=5-568&showAll=1&frames=on">http://www.qcode.us/codes/sacramento/view.php?topic=5-568&showAll=1&frames=on</a>)

According to the Roseville Downtown Code 7.8.4 Open Air Vending Facilities Item #1 the vendor cannot be within 100 feet of a permanent business whose primary business is selling the same "Item". We are requesting that this be changed from "Item" to "Food". This is placing an undue financial burden on the existing businesses. Since there are only 3 restaurants in the area for late night eating and only open on Thursday, Friday and Saturday nights the income potential is limited. Now we have to compete with Vendors that roll in and out with no ties, taxes, overhead and yearly fees that we 3 all share.

The City of Roseville has issued multiple permits at the same address with the same type of food sold. According to Ordinance 7.8.4 item #1 this is a violation because they are not 200 ft. apart.

The Night Club and Bar owners are in agreement with the adoption of a new ordinance. Because they sell food during the day and up until 10 pm having the mobile/open air vendors show up from 3 pm to 2:30 am cuts into their revenue as well They are willing to sign a letter stating so.

We had a great experience working with the Roseville Infill team to open Smokin Hot Dog and to add to revitalizing the downtown historic area. This is an ongoing project for Roseville and we feel that we are a positive addition to the area and that it is improving. We are a brick and mortal business, paying taxes, rent, utilities and we are not breezing in

taking away an established business customers and breezing out. We choose to be here for the long haul. Now it is apparent that this might not be our reality. The three businesses involved may not have any other option but to consider closing. That would result in three vacant locations that would need to find new tenants. This would slow down the potential revitalization of this area. The property owner Richard Ryan would be impacted financially as well. He will have to locate three new tenants to occupy the vacancies. Other establishments in the area could potentially suffer due to fewer customers. Many of their current customers may be less inclined to come to the area due to a lack of places to eat late at night. The primary reason we opened our location was to meet that specific need and contribute to everyone's success in the area.

Kind Regards,

Teri Merryweather and Kathy Garner Smokin Hot Dog 328 Lincoln St. Roseville, Ca 95678 916-871-9635

ATTACHMENT 2

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Request	The following ormation is a summary of various City's relations/policies vendors (food carts) and mobile food vendors (food trucks). The information includes each city's population, density, and the contact person I received information from regarding their City's respective ordinances/policies. Additionally, I have attached the Code Section of each jurisdictions Ordinance that pertains to Open Air and Mobile Food Vendors.
City Population; Density Contact Person	Response
Roseville, CA 118,788; 3,279/sq mi Wayne Wiley	Open Air vendors on private property require an Administrative Permit and in the public right-of-way require a Conditional Use Permit. In the Historic Downtown District a Zoning Clearance is required (see Zoning Ordinance & Downtown Code for restrictions).
	Mobile Food Vendors are not regulated.
	Governed by the Planning Department.
Portland, OR 583,700; 4,200/sq mi Julie Derby	Open Air Vendors are only allowed in commercial zones and no food vendor can be located within 100 feet of a restaurant, coffee shop, or fruit stand on the same block except with written consent of the adjacent business owners.
	Mobile Food Vendors are allowed exempt from permit.
	Governed by specific traffic regulations.
	Open Air Vendors are Prohibited
Sacramento, CA 466,400; 4,600/sq mi Heather Forest	Mobile Food Vendors are prohibited from operating between the hours of 8 pm – 5 am (April, May, June, July, August, September and October) and between the hours of 6 pm – 5 am (November, December, January, February and March). Additionally they may not stay in one location more than thirty (30) minutes, without moving to a new location at least four hundred (400) feet away; Within four hundred (400) feet of any other food vending vehicle; or Within one hundred (100) feet of any street intersection controlled by traffic light or stop sign.
	May operate on private property with written consent of owner. Restricted to operating in a heavy commercial and industrial zoning districts, or a commercial and hospital zoning district.  Regulated by City's Revenue Division
Santa Monica, CA 89,736; 10,700/sq mi Travis Page	http://www01.smgov.net/cityclerk/council/agendas/2011/20110621/s2011062104-A.htm Open Air vendors are prohibited.
	Mobile Food Vendors are allowed in the public right of way exempt from permit. If located on private property requires a Use Permit. The City is currently looking to restrict trucks between certain hours in their downtown area – new ordinance will take effect 30 days from November 8 <sup>th</sup> 2011.
	Vendor Permits are issued through the Police Department
Chico, CA 86,00; 2,600/sq mi Zach Thomas	Open Air Vendors in the city right of way require administrative approval of a Vend Peddle Hawk Permit from the Engineer Department
	Mobile Food Vendors on private property require a Use Permit to ensure the business is consistent with local ordinances and codes. Needed this requirement due to businesses operating illegally. Mobile food vendors in the city right of way require administrative approval of a Vend Peddle Hawk Permit from the Engineer Department.
Davis, CA 65,600; 2,500/sq mi Eric Lee	Open Air Vendors are prohibited, unless associated with a Special Event.
	Mobile food vendors operating on Private property must obtain a zoning permit (no fee) and must have approval of the property owner – Permitted by right in the Industrial, PD, and Office zones. Requires a CUP in Commercial and CMU zones. On Public Property (streets/sidewalks) with approval of City traffic engineer or City Council (S 22.08.210 b); Davis

	Farmers' Mar' 'requires a special permit issued through MA.
	Mobile Food Vendors require a Public health permit from Yolo County; Business License from City of Davis; Zoning Permit from Community Development to operate on private property or an encroachment permit from Public Works to operate on public property – vendors operating on public property for less than ten minutes per location are exempt from this requirement.
	Open air vendors allowed in the downtown if in association with an existing businesses.
Walnut Creek, CA 64,173; 3,200/sq mi Ken Nodder	Mobile Food Vendors (itinerate merchants) are prohibited in the public right of way; may be located on private property.
	Governed by Business Licensing.
Pasadena, Ca 54,000; 2,500/sq mi Antonio Gardena	Open Air Vendors are Section 8.16.020 restricts carts to residential zones for no more than 5 minutes in one area and in public park for no more than 4 hours. Prohibited in the commercial zones. Allowed with health department permit.
	Mobile Food Vendors must be located on Private Property with the written consent of the property owner. CUP required private Property. If in public right-of-way regulated by California vehicle code
Lincoln, CA 42,819; 2,100/sq mi Robert Poetsch	Non-motorized street (Open Air) vendors can operate for no more than 12 calendar days per year (LMC 5.24.060).
	Mobile food vendors are allowed to remain in any one location for a period not to exceed 15 minutes (Lincoln Municipal Code section 5.24.060(A)(12)).
City of Monrovia, CA 36,590; 2,600/sq mi Sheila Spicer-Batice	Non-motorized vehicles or carts for vending are prohibited on city streets, sidewalks, and parks, unless permission is granted through a Special Event Permit.
	Mobile food vendors may only park on the street between 8am-7pm for no more than 20 min. May not stop in the same location for another 4 hour period and shall be restricted to one vehicle at a particular location at any given time. Prohibited from locating downtown.
	Governed by Business Licensing Existing rules in place; needed to refine them due to an increase in the number of mobile vendors.

# 7.0 Downtown Specific Ordinances

# 7.8.4 Open Air Vending Facilities



## A. Purpose

The purpose is to provide standards for Open Air Vending Facilities selling prepared food, fresh cut flowers or plants or any other use determined by the Director to be consistent with this type of sales, when not in association with a permanent business.

# **B.** Applicability

Businesses licensed through the City may be permitted in the downtown commercial and industrial districts.

#### C. Permit Required

The use shall be on improved private property and obtain a Zoning Clearance. Additionally, an Encroachment permit is required for any facility located within the Public Right of Way. Permit provisions will be subject to the same standards as provided for in Sections 7.8 of the **Downtown Code.** (Improved private property shall be defined as a property which has a paved legal access and adequate hardscaping to accommodate an open air vending facility).

#### D. General

Open Air Vending Facilities are anticipated attributes to a healthy downtown. The following

standards are provided in order to insure that future uses within the public-right-of way do not conflict with goals established in Specific Plan and the **Downtown Code.** An open air vending facility shall comply with the following development standards:

- The use shall not be within 200 feet of another vending facility, or within 100 feet of a permanent business whose primary business is selling the same item (e.g. flowers, hot dogs) similar items (e.g. food and beverage items);
- 2. The use shall not be within 15 feet of any fire hydrant;
- The use shall not occupy required off-street parking spaces or required landscape areas, and shall not be located on a pedestrian path/sidewalk that is less than 10 feet in width. A minimum of a six-foot path of travel shall be maintained around the facility;
- The use shall not be allowed to be located within any required landscaping setback adjacent to a public street;
- 5. The use shall not exceed more than 200 square feet in area;
- At an intersection, the use shall be located outside of a 25-foot by 25-foot commercial clear vision triangle;
- The use shall include trash receptacle(s) and such receptacles shall be maintained, by the vendor, so as not to create an offending odor or visual nuisance;
- The area on which the open air vending facility is located shall be kept free of debris;
- 9. The use shall not reflect undesirable light and glare from the designated premises;
- 10. The use shall not use, play or employ any sound, outcry, amplifier, loudspeaker, radio or any other instrument or device for the

