



**CITY OF SALINAS
COUNCIL STAFF REPORT**

DATE: **AUGUST 24, 2021**

DEPARTMENT: **PUBLIC WORKS AND COMMUNITY DEVELOPMENT**

FROM: **DAVID JACOBS, DIRECTOR
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BY: **ADRIANA ROBLES, CITY ENGINEER
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TITLE: **ORDINANCE AMENDMENTS TO ARTICLE XVI OF CHAPTER
20 (MOTOR VEHICLES AND TRAFFIC) AND CHAPTER 37
(ZONING CODE) OF THE SALINAS MUNICIPAL CODE
PERTAINING TO MOBILE VENDORS AND FOOD TRUCKS –
SECOND READING**

RECOMMENDED MOTION:

A Motion to:

1. Find the project categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15305 and 15061(b)(3);
2. Adopt an Ordinance amending Chapter 37 of the Salinas Municipal Code (Zoning Code) to allow consideration of Food Trucks operating on private property subject to a Conditional Use Permit (CUP) (ZCA2021-004); and
3. Adopt an Ordinance, including errata, amending Article XVI of Chapter 20 of the Salinas Municipal Code updating the regulations governing food trucks, ice cream trucks, nonmotorized pushcarts and street vendors (Vendor Ordinance).

If the Vendor Ordinance is adopted as outlined, a motion to approve a Resolution:

4. Allocating \$62,400 from the General Fund for the establishment of 52 “designated locations” for food trucks;
5. Allocating \$31,200 from the General Fund to cover code enforcement overtime dedicated to vendor enforcement for the first six (6) months;
6. Creating a new Code Enforcement Officer II position dedicated to vendor enforcement;
7. Allocating \$70,500 from the General Fund for new Code Enforcement Officer II position for dedicated vendor enforcement (portion of FY 2021-22);

8. Allocating \$141,000 from the General Fund annually for Code Enforcement Officer II salary for continued dedicated vendor enforcement (starting FY 2022-23); and
9. Allocating \$40,000 annually from the General Fund for police officer overtime for dedicated vendor enforcement support.

RECOMMENDATION:

It is recommended that the City Council:

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3. Adopt an Ordinance, including errata, amending Article XVI of Chapter 20 of the Salinas Municipal Code updating the regulations governing food trucks, ice cream trucks, nonmotorized pushcarts and street vendors (Vendor Ordinance).

If the Vendor Ordinance is adopted as outlined, it is recommended that the City Council approve a Resolution:

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3. Creating a new Code Enforcement Officer II position dedicated to vendor enforcement;
4. Allocating \$70,500 from the General Fund for new Code Enforcement Officer II position for dedicated vendor enforcement (portion of FY 2021-22);
5. Allocating \$141,000 from the General Fund annually for Code Enforcement Officer II salary for continued dedicated vendor enforcement (starting FY 2021-22); and
6. Allocating \$40,000 annually from the General Fund for police officer overtime for dedicated vendor enforcement support.

EXECUTIVE SUMMARY:

This is the Second Reading of proposed ordinance amendments to allow and establish a permit process for food trucks to vend adjacent to public parks; allow the creation of “designated locations” in the public right-of-way for exclusive use by assigned food trucks; allow and establish operating restrictions for mobile vending by food trucks; allow and establish operating restrictions for ice cream trucks; establish condition and appearance requirements for food trucks, ice cream trucks and nonmotorized pushcarts; restrict food trucks on High Collision Corridors; restrict nonmotorized pushcarts and street vendors at High Collision Intersections; and allow and establish a permit process for food trucks operating on private property in certain zoning districts.

Based on public comments received during the First Reading on June 22, 2021, the City Council recommended that staff meet with the Salinas Valley Chamber of Commerce and Salinas United Business Association (SUBA) to answer any questions and concerns they might have about the Vendor Ordinance and Zoning Code amendments and to return with an enforcement and implementation plan including any proposed budget augmentation and workforce allocation. This

report outlines staff proposed implementation plan and resource needs.

While the Vendor Ordinance and ZCA Ordinance Amendments are being presented together as both Ordinance Amendments address vending, approval of each proposed Ordinance Amendment is to be taken as a separate action. The City Council could therefore choose to: 1) approve both Ordinance Amendments, 2) approve one of Ordinance Amendments and not the other, or 3) not approve either of the Ordinance Amendments. It is staff's recommendation that the Council approve both Ordinance Amendments as a comprehensive vending program. However, should the Council choose not to approve the Vendor Ordinance Amendment, it is recommended that Council approve the ZCA Ordinance Amendment to allow for vending on private property through a Conditional Use Permit.

BACKGROUND:

On June 22, 2021, Community Development staff and the City Engineer presented the First Reading of the proposed Vendor Ordinance Amendment and Ordinance Amending Chapter 37 (Zoning Code) of the Salinas Municipal code pertaining to Mobile Vendor and Food Trucks to the City Council. City Council was unable to take action as one councilmember recused themselves due to a conflict of interest. In order for City Council to take action at a First Reading of an ordinance, all Councilmembers must be present and a unanimous vote for approval is required. The remaining Councilmembers received staff's presentation and public comment and directed staff to address questions and concerns raised by the Council and the public regarding the proposed Ordinance Amendments and to return with an enforcement and implementation plan, including any proposed budget augmentation and workforce allocation.

DISCUSSION:

Concerns Raised

At the First Reading, Councilmembers requested staff provide a breakdown of vendor permit fees, further explanation of the rationale for the fifty-two designated spaces, and that staff conduct additional stakeholder outreach beyond the public hearing noticed published in the newspaper and the mailed notifications to property and business owners within 300 feet of each of the 52 designated spaces.

Both the Salinas Valley Chamber of Commerce (Chamber) and Salinas United Business Association (SUBA) submitted public comment letters requesting more time be given before taking action on Vendor Ordinance and Zoning Code Amendments to allow more stakeholders to provide input and for staff to provide more information about the basis behind the proposed Vendor Ordinance changes and Zoning Code Amendment. A primary concern raised was Ordinance Amendment impacts to brick-and-mortar restaurants, and the creation of unfair competition between vendors and brick and mortar restaurants. Both the Chamber and SUBA shared concerns that this analysis was missing from staffs' report and requested that permit fees and market data be provided to provide for more balanced discussion and consideration of proposed Ordinance Amendments.

Vendor Permit Fees

As requested, a breakdown of vendor permit fees is provided in the table below.

	City of Salinas Fees	Other Agency Fees
Vendor Permit: Food Truck Fee (includes all vendors)	\$690.00	
Vendor Permit: Fresh Fruit and Vegetables food truck fee (proposed incentive)	\$195.25	
Vendor Permit: nonmotorized pushcart fee	\$102.75	
Vendor Permit: ice cream truck fee (proposed)	\$195.25	
Vendor Application fee:	\$68.75	
Vendor ID: req. for all vendors	\$16.50	
Business License	Based on gross receipt	
Conditional Use Permit (Private property)	\$6,012.30	
Co. Monterey Health Department – Health Permit		\$400-\$600
Sellers Permit – State Board of Equalization		Tax Fees
Food Handler Certification		\$10-\$20 per employee
Commissary Lease		\$500- \$1,000 monthly (estimate)
Bathroom Lease		\$500- \$1,000 monthly (estimate)
Food Truck Insurance		\$2,000-\$4,000 annual (estimate)
Vehicle Registration (Truck)		\$100 - \$1,000 annual (estimate)

Selection and number and site selection of designated locations:

To increase the number of permits, City Engineer evaluated locations based on different parameters like distance from intersection, distance from school, distance from residential districts, time limit parking, locations on non-arterial streets and the cost to add a “designated location”. After evaluating the cost amount of \$1,200 per designated location it was determined that a total of 52 locations could be assigned as designated locations. This adds twenty (20) new permits on top of the existing thirty-two (32) permits for a total of fifty-two (52) designated location permits.

Stakeholder Outreach:

Staff met with Kevin Dayton of the Salinas Chamber of Commerce via Zoom on June 30, 2021 and with Alejandro Chavez and Rodolfo Rodriguez of SUBA via Zoom on July 1, 2021 to discuss their organization’s questions and concerns regarding proposed Ordinance Amendments. The Chamber requested that the staff report include a more balanced analysis of Ordinance Amendment impacts to brick-and-mortar restaurants and asked if local preference for the designated locations and limits to number of fleet a food truck vendor operate could be incorporated into proposed amendments. SUBA also requested additional brick and mortar impact analysis be provided, including permit

requirements for both food trucks and the brick-and-mortar businesses and asked if the City could limit the number of roaming food truck vendors and could the City require an audit of food vendors to confirm appropriate taxes are collected and EEOC regulations are followed. The City's plan for education and enforcement was also discussed. Staff also offered to meet with Chamber and SUBA brick and mortar restaurants. Neither organization followed up with a specific meeting request.

Staff provided the Chamber and SUBA's questions and suggestions regarding local preference, limiting the number of food trucks per vendor, and auditing to the City Attorney for direction. The City Attorney's response was that the City cannot favor one form of business over another nor can it limit the number of permitted food trucks a vendor operates. The City's local preference policy applies to the City's procurement process and does not establish preference for a particular business or business sector. The City does not limit the number of brick-and-mortar businesses an owner can operate, nor does it, or should it, conduct financial audits of any businesses or vendors. Furthermore, analysis of suspected impacts to brick-and-mortar businesses can be provided but cannot be the basis for regulations.

Analysis of Impacts to Brick-and-Mortar Restaurants

Comparing these two types of business has its challenges as differences in their business model do not allow for an "apples to apples" comparison. Brick-and-mortar restaurants have certain services that are not provided or allowed to be provided by food trucks, for example, the ability to sit down and be served a meal, sell alcohol, or to have drive-thru service. Food trucks vendors have more flexibility to shift their location to attract customers. Food trucks also have lower startup cost and operation. This comparison is also challenging because it assumes that a business either operates a restaurant or a food truck, but in reality, many businesses have both. Some food truck operators have been able to open a brick-and mortar restaurant after gaining popularity via their food truck. Some restaurants have purchased a food truck to help promote their restaurant. This symbiotic relationship does not create competition, but rather helps these businesses prosper.

Staff analyzed approximate startup costs for both brick-and-mortar restaurants and food trucks and based on the research it is evident that brick-and-mortar restaurants do have a higher-cost threshold to start and operate a business than a food truck. Average cost for brick-and-mortar restaurant is \$100,000 to \$500,000 while average startup costs for a food truck are \$100,000 -150,000. Both incur permit and license fees, pay utilities, insurance, and another operational (i.e., employee and inventory) costs, but at different scales of magnitude. While brick and mortar restaurants pay rent or mortgage, food trucks pay rent for commissary and restroom access for their employees. In terms of permits required in a city, county, and state both businesses require similar permits with similar cost.

A primary concern for brick-and-mortar restaurants is the proximity of food trucks to their business which creates competition by potentially taking away customers. Outside of current Salinas Municipal Code regulations, the City cannot limit the number or location of a brick and mortar or food truck operations. For example, the City cannot limit the number of quick service restaurants in a shopping center and location. The City regulates land use, health, and safety, not market competition. However, the City can connect all businesses with education, training and technical assistance resources such as El Pájaro Community Development Corporation or the Small Business Development Center to assist them with business planning, operation management and access to capital.

Enforcement/Implementation Plan

Education and Stakeholder Outreach

Staff proposes the following outreach should Ordinance Amendments be approved:

Bulletins and Informational Pamphlets: Staff would update or create, as needed, informational bulletins and pamphlets to educate prospective food truck vendors of the Ordinance provisions and the CUP and vendor permit process. Information will be bilingual and available both over the counter at the Permit Center and online.

Townhall Meetings: Staff from Development Engineering (vendor permit) and the Community Development Department (Advanced Planning and Project Implementation, Current Planning, and Code Enforcement) would convene townhall meetings with vendors.

- First Townhall Meeting: Regulations would be summarized, and permit options explained. Current vendors would have the option to select their preference for vendor type (designated location, mobile, or private property) and designated location.
- Second Townhall Meeting: A virtual meeting open to the public would be held via Facebook Live to introduce the Ordinance Amendments followed by a question-and-answer session.

Additionally, the Business Navigator (PPI) would provide business support to perspective vendors and property owners interested in obtaining a Conditional Use for food trucks and assist in compiling required documents for obtaining a vendor permit.

Enforcement Strategy

Consistency is key for an effective enforcement. It is recommended that Code Enforcement will lead vendor enforcement and a new Code Enforcement Officer II (CEO II) be created for dedicated vendor enforcement. The CEO II will primarily be conducting education and outreach with the vendors to familiarize themselves with the residents and build workable relationships. The new CEO II assigned to conduct enforcement would be an experienced individual with background knowledge on codes and ordinances as well as procedures. The CEO II will also be able to operate with limited supervision and direction from the Code Enforcement Manager. The position may also be underfilled by a Code Enforcement Officer I (CEO I) that possesses the knowledge and experience needed to fill the demands of the position. The CEO II will have a flexible schedule to meet the demands of the job, shifts will include late afternoons, nights, and weekends and holidays if needed.

It is anticipated to take six (6) months to hire a new CEO II. Knowing that effective enforcement from the beginning, is key, and until the new CEO II position is filled, current Code Enforcement Officers with background knowledge of Vendor Ordinance and Zoning Code Amendment updates will fulfill enforcement duties with overtime for afternoon, nights, and weekend.

When conducting outreach, the CEO II will be in direct contact with Salinas Police Dispatch and will request Police Officer assistance when necessary. A Police Officer will be available to back-up to help the CEO II address any vehicle code violation(s) or any other violation(s) related to the Vendor Ordinance and/or any government code violation. Vendors in violation of the Vendor Ordinance will be issued an Administrative Citations pursuant to the fines established in the Municipal Code. Fines range from \$250.00 up to \$1,000.00 per violation, dependent on the

violation(s) and frequency of the violation(s). Should the escalation of violation(s) lead to the impounding of a catering truck, Salinas Police Department will lead the impound process and will consult with local jurisdiction on the disposal of food waste. Those violators that are in consistent violation and have a valid vendor permit may be recommended by the CEO II to have their permit revoked. The revocation process will be led by the Development Engineering Division.

Budget augmentation and workforce allocation

Staff recommends creating a new Code Enforcement Officer II (CEO II) position for dedicated vendor enforcement with a flexible schedule to meet the demands of the job, shifts will include late afternoons, nights, and weekends and holidays if needed. The CEO II will work directly with Salinas Police Dispatch and will request Police Officer assistance when necessary. In addition, from working with Police Department, the CEO II will work with Development Engineering and Advance Planning and Project Implementation staff for vendor permitting education outreach, permit processing, and enforcement status updates.

Initial Project and Enforcement Cost		
Pavement marking and signage for 52 locations	\$1,200 per location	\$62,400
Code Enforcement Officer Overtime (6 months)	Time and half after 8-hr shift	\$31,200
Code Enforcement Officer II (6 months)	Step 6 wages + benefits at step 6	\$70,500
Police Officer Overtime (dedicated support)	10-hour overtime shifts at \$1,000 or \$100 per hour	\$40,000
Total:		\$204,100

On-going Annual Enforcement Costs		
Code Enforcement Officer II	Step 6 wages + benefits	\$141,000
Police Officer Overtime (dedicated support)	10-hour overtime shifts at \$1,000 or \$100 per hour	\$40,000
Total:		\$181,000

Although this is a substantial financial commitment from the City, it is anticipated that these costs will be offset by citations that can be rolled back into the program. Based upon similar enforcement activities, it is reasonable to expect at least \$80,000 in citations. In addition, the City will benefit from increased business licensing and sales tax revenue derived from additional businesses.

Additional Proposed Changes to Article XVI Vendor Ordinance Amendment

When Public Works Department (Development Engineering Division) and the Community Development Department (Advanced Planning and Project Implementation Division and Code Enforcement) met to discuss enforcement/implementation plan staff reviewed *Article XVI Vendor Ordinance Amendment Section 20-16.160. – Penalties*. It was determined that aligning the administrative citation fines to match for both the non-motorized cart and ice cream truck without permit and the vendors with permits was a solution that would lessen future conflicts when issuing citations. An Errata page with the changes is attached for Council consideration. Proposed

addition changes are also provided below:

~~(Strikethrough indicates text to be deleted and underline indicates text to be added):~~

Sec. 20-16.160. - Penalties.

- (f) Any person conducting business as a vendor in the public right-of-way while in violation of this article shall be issued administrative citations and fines pursuant to Government Code Section 51039. Administrative fines shall be issued pursuant to the following:

- ~~(1) One hundred dollars for a first violation.~~
- ~~(2) Two hundred dollars for a second violation within one year of the first violation.~~
- ~~(3) Five hundred dollars for each additional violation within one year of the first violation.~~
- (4) The offender may face permit revocation as provided in Section 20-16.170 of this article following a fourth violation of this article.

- (1) Two hundred fifty dollars for a first violation.
- (2) Five hundred dollars for a second violation within one year of the first violation.
- (3) One thousand dollars for each additional violation within one year of the first violation.

XVI Vendor Ordinance Amendment and Zoning Code Amendment Recommendations

While the Vendor Ordinance and ZCA Ordinance Amendments are being presented together as both Ordinance Amendments address vending, approval of each proposed Ordinance Amendment is to be taken as a separate action. The City Council could therefore choose to 1) approve both Ordinance Amendments, 2) approve one of Ordinance Amendments and not the other, or 3) not approve either of the Ordinance Amendments. It is staff's recommendation that the Council approve both Ordinance Amendments as a comprehensive vending program. However, should the Council choose not to approve the Vendor Ordinance Amendment, it is recommended that Council approve the ZCA Ordinance Amendment to allow for vending on private property through a Conditional Use Permit.

FINDINGS:

As presented at the first reading, adoption of both Vendor and Zoning Code Ordinance Amendments ("Ordinance Amendments") would address all three of the identified objectives of the Vendor Task Force:

- 1) Reduce the number of small business owners on the waitlist by increasing opportunities to operate on private property.
- 2) Improve enforcement by creating clearly defined standards through the Conditional Use Permit process.
- 3) Encourage additional opportunities for small business enterprise.

The Ordinance Amendments are consistent with the Salinas General Plan and other plans and policies adopted by the Salinas City Council and would not result in inconsistent land uses. The proposed Ordinance Amendments are also consistent with the Vision Salinas Guiding Principles

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of Economic Prosperity, Equity and Diversity which states, “a City where all persons have equitable access to prosperity through a diversified economy, jobs and educational/training”. The Ordinance Amendments align with the Economic Prosperity, Equity and Diversity Principle by fostering small business development and supporting entrepreneurship among food and beverage purveyors who may have difficulty securing capital or even a location for a “brick and mortar” establishment. Findings in support of the proposed Ordinance Amendments are incorporated in the draft Ordinances and the June 22, 2021 staff report attached to this report.

CEQA CONSIDERATION:

The environmental impacts of the project have been analyzed in accordance with the California Environmental Quality Act (CEQA). The proposed Ordinance Amendments are categorically exempt (Class 5) from further environmental analysis per CEQA Guidelines Section 15305 (Minor Alterations in Land Use Limitations). Both Amendments are also categorically exempt from CEQA pursuant to Guidelines Section 15061(b)(3). This exemption is allowed when the activity, in this case the adoption of these Ordinances, does not have the potential for causing a significant effect on the environment. The proposed Zoning Code Amendment will allow the use of food trucks on already developed private property subject to a Conditional Use Permit (CUP) to mitigate any potential impacts. The proposed Vendor Ordinance Amendment includes refinements to vendor definitions, operation restrictions and adds designated vending locations in the public right-of-way.

STRATEGIC PLAN INITIATIVE:

This staff report and recommendations align with the following City Council strategic plan initiatives:

- Investment Strategies/Risk Management
- New Revenue
- Public Safety

FISCAL AND SUSTAINABILITY IMPACT:

If the Vendor Ordinance Amendment is approved, implementation requires budgetary and staffing resources. Based on the current waitlist, a high volume of vendor applicants is anticipated. Without a permit cap, this could result the processing of hundreds of permits. In addition to administration, enforcement is vital to the successful implementation of the Vendor Program. Without adequate enforcement, there is a high likelihood of unpermitted vendors operating in Salinas at the expense of vendors who played by the rules and obtained a permit. To efficiently and fairly administer the Vendor Program, resources must be dedicated to vendor education and Ordinance enforcement.

The City Council’s adoption of the proposed Vendor Ordinance would result in the following initial project and enforcement costs of \$204,100 and annual enforcement costs of \$181,000.

Initial Project and Enforcement Cost		
Pavement marking and signage for 52 locations	\$1,200 per location	\$62,400
Code Enforcement Officer Overtime (6 months)	Time and half after 8-hr shift	\$31,200
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It is anticipated that at least \$80,000 annually will be generated through citations, which could be rolled back into the program to reduce costs to \$101,000. In addition, assuming 400 vendor permits are issued annually, vendor permit fees collected may range from \$255,000 to \$270,000 per year. A portion of revenue collected could also be used to offset enforcement cost. As a result of this program, it is reasonable that revenue through business licensing and sales tax will also increase and benefit the General Fund. It is difficult to predict the positive impact to the General Fund, but staff can work with the Finance Department to evaluate this if the program is implemented.

It is anticipated that the fees collected as a result of the Zoning Code Amendment (ZCA) for the processing of Conditional Use Permits (CUP) will cover approximately 60% to 70% of planning related costs. The CUP runs with the land and is a one-time expenditure. Therefore, it is not expected that the ZCA will create the same resource demands as the Vendor Ordinance implementation.

DEPARTMENTAL COORDINATION

Since the First Reading, Public Works Department (Development Engineering Division) and the Community Development Department (Advanced Planning and Project Implementation Division) coordinated three meetings with Code Enforcement and Police Department staff to discuss implementation efforts and strategies to successfully implement the Vendor Ordinance and Zoning Code Amendments. In addition, staff from Public Works and Community Development Department met via zoom with representatives from both SUBA and the Salinas Chamber to discuss proposed Vendor Ordinance and Zoning Code Amendments and to hear their concerns and suggestions regarding proposed amendments.

ATTACHMENTS:

- Attachment 1: Article XVI, Chapter 20 Ordinance Amendment with Errata Sheet
- Attachment 2: Resolution – Vendor Ordinance Budget Appropriation
- Attachment 3: Vendor and Zoning Code Ordinance Amendments First Reading Staff Report
- Attachment 4: Article XVI Vendor Ordinance Amendment First Reading
- Attachment 5: Chapter 37 Ordinance Amendment (ZCA2021-004)
- Attachment 6: PowerPoint Presentation First Reading
- Attachment 7: Planning Commission Resolution (ZCA2021-004)
- Attachment 8: Vendor Ordinance Update – Summary of Changes, dated June 14, 2021
- Attachment 9: Food Truck Regulations for other Cities
- Attachment 10: Proposed Vendor Designated Locations, dated June 14, 2021
- Attachment 11: draft Vision Zero Action Plan, 10 High Collision Corridors
- Attachment 12: draft Vision Zero Action Plan, 10 High Collision Intersections
- Attachment 13: draft Vending Exhibits