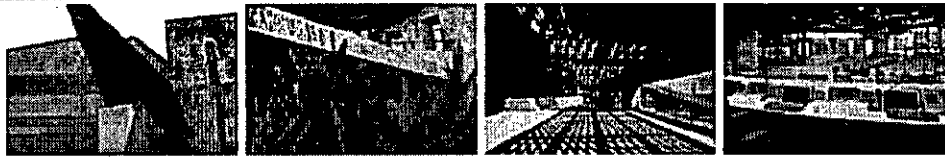


A U S T I N C I T Y C O U N C I L

AGENDA



Thursday, August 31, 2006

Back Print

Public Hearings and Possible Actions RECOMMENDATION FOR COUNCIL ACTION

ITEM No. 63

Subject: Conduct a public hearing and consider an ordinance amending Title 25 of the City Code to establish regulations relating to the distance separating a mobile food establishment from a residential use.

Amount and Source of Funding: (No fiscal impact.)

Additional Backup Material
(click to open)

- ☐ Ordinance approved on 6-8-06
- ☐ Staff report

For More Information: Greg Guernsey, 974-2387; Sylvia Arzola, 974-6448.

Boards and Commission Action: (Recommended by Planning Commission.)

Prior Council Action: 4/26/06 - Council directed the City Manager to process a code amendment to allow mobile food establishments in certain zoning districts. 6/8/06 - Council approved an ordinance regarding mobile food establishments and requested that the Planning Commission make a recommendation regarding the appropriate buffering between a mobile food establishment and a residential use to Council by August 31, 2006.

On June 8, 2006, the City Council approved an ordinance that addresses the location and operation of mobile food establishments. The ordinance allows mobile food establishments to exist and operate on private property without the need for a site plan, site plan exemption or temporary use permit. The ordinance approved by Council is attached.

The Council also requested that the Planning Commission recommend an amendment that would address appropriate distance between a mobile food establishment and a residential use, and report to Council by August 31, 2006.

The Planning Commission considered the amendment on August 22, 2006. Their recommendation is included in the attached staff report.

Code Amendment# C20-06-007.

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-06-007

Description:

Conduct a public hearing and consider an ordinance amending Title 25 of the City Code to establish regulations relating to mobile food establishments.

Background:

The original interim mobile food establishment amendment ordinance was initiated by the City Council on April 20, 2006 and sponsored by Council Member Raul Alvarez, Council Member Betty Dunkerley and Council Member Lee Leffingwell. A copy of a draft ordinance with suggested language was provided by Council Member Alvarez and addressed where a mobile food establishment can locate and exempts these establishments from being required to provide a site plan, revise a previously approved site plan or obtain a site plan exemption prior to the establishment of this use (see Attachment "A").

The purpose of the original amendment was to clarify where and how a mobile food establishment may operate within the limited and full purpose jurisdiction of the City of Austin. Currently, a mobile food establishment is not provided for under the City's zoning regulations and is a prohibited use. After consultation with Council Member Alvarez, a draft mobile food establishment ordinance was prepared. The original draft ordinance provided for a mobile food establishment as a temporary use that would be permitted on private property in all commercial and industrial zoning districts, if they meet the following requirements:

1. they must be licensed by the health authority;
2. must be at least 200 feet from a residential use;
3. may not operate between the hours of 3:00 a.m. and 6:00 a.m.;
4. may not be located within 300 feet of another mobile food establishment facility within the same block on the same side of the street;
5. may not use sound equipment (loud speakers, public address system, amplification system, etc.);
6. may not provide a seating area for customers; and
7. must provide support parking for at least four vehicles.

The ordinance also provided that a mobile vending use is an accessory use and not subject to the above requirements, if it is located on the same site as a restaurant (limited) or restaurant (general) use; and serves food provided by the restaurant (limited) or restaurant (general) use.

A temporary use does not require site plan approval, a revision to a previously approved site plan or a site plan exemption to operate; however, a temporary use does require an application that must include a diagram and a description of the use (See Section 25-2-992). A temporary use may continue for not more than one year and provides that an applicant must file a new application to continue a temporary use beyond that period.

Departmental Comments:

On June 8, 2006, the City Council approved an interim ordinance (see attachment "B"). The approved ordinance modified the Planning Commission draft version of the ordinance (See attachment "C") and directed the Planning Commission to make a recommendation to the Council regarding the appropriate buffer between a mobile food establishment and a residential use.

Other Board and Commission Action:

On August 15, 2006, the Codes and Ordinance Subcommittee of the Planning Commission considered the residential buffering issue and voted to approve the following recommendations:

MOTION:	VOTE:
<i>Hours of operation depend on distance from residential property line (and residential includes all residential uses, such as duplex, multi-family). If > =300 feet, operation hours limited to 6am to 3am If < 300 feet and >= 200 feet, operation hours limited to 6am to 2am If < 200 feet, operation hours limited to 6am to 10pm. Vendors are prohibited less than 100 feet from a residential property line.</i>	<i>APPROVED 6-0 (JR-1st, MD-2nd)</i>
<i>If a site is greater than 3 acres in size, greater security must be provided between 10pm and closing.</i>	<i>APPROVED 6-0 (JR-1st, GS-2nd)</i>
<i>Vendors must be at least 300 feet from schools and playgrounds.</i>	<i>FAILED for lack of a second. (GS-1st)</i>
<i>Revise language in part G and H of the June 8th interim ordinance (on page 2 of the approved ordinance) to have vendors responsible for maintaining a clean site. (Add "keep the area clean" and strike "each day of operation.")</i>	<i>APPROVED 6-0 (MD-1st, SK-2nd)</i>

Planning Commission Action:

May 9, 2006: To grant the Staff requested postponement to May 23, 2006. (Vote: 8-0)

Planning Commission Action (cont'd):

May 23, 2006: 1ST MOTION: Recommendation to city council to form a task force to address the issues regarding mobile food establishments, within 90-days. Task force to include representatives of Zoning & Platting Commission; Planning Commission & stakeholders.
[M.DEALEY, D.SULLIVAN 2ND] (Vote: 8-0) G.STEGEMAN – ABSENT

2ND MOTION: Approved staff's recommendation, deleting the 200-foot setback from a residential use.
[C.GALINDO, K.JACKSON 2ND] (Vote: 5-3) C.RILEY, D.SULLIVAN, M.DEALEY – NAY; G.STEGEMAN – ABSENT

August 22, 2006: Recommended the following changes to the existing ordinance establishing temporary regulations:

1. To revise Part 2, paragraph (H) as follows:

The permit holder shall clear the area around the mobile food establishment of litter and debris each day of operation.

2. To revise the regulations addressing a mobile food establishment as an accessory in Part 2, paragraph (K) to add restrictions as follows:

(3) may only operate between the hours of 6:00 a.m. and 10:00 p.m.;

(4) would be subject to the same operating restrictions in Part 2, paragraphs (C) noise, (E) external lighting, (F) signs, (G) trash receptacle and (H) litter and debris.

3. To revise Part 2, paragraph (L) as follows:

This ordinance does not apply to a mobile food establishment that is located on private property for three hours or less in a 24-hour period and operates between the hours of 6:00 a.m. and 10:00 p.m.

4. To create a new setback and hours of operation section that would provide allow neighborhoods or areas with adopted neighborhood plans to limit the operations of a mobile food establishment as outline below. Neighborhoods or areas with adopted neighborhood plans could request these additional regulations by making a request that in a manner similar to the "opt-in" front yard no parking ordinance.

- o To provide for 50 feet setback from a residential use allowed in a SF-5 or more restrictive zoning district [single family residence, single family residence-small lot, duplex, two-family residential, townhouse (10 units of less)* and condominium residential (10 units or less)**] or a SF-5 or more restrictive zoning district.

- To limit the hours of a mobile food establishment to operate between the hours of 6:00 a.m. and 10:00 p.m., if the use is located between 50-300 feet of a residential use allowed in a SF-5 or more restrictive zoning district or a SF-5 or more restrictive zoning district.
- To limit the hours of a mobile food establishment to operate between the hours of 6:00 a.m. and 3:00 a.m., if the use is located over 300 feet of a residential use allowed in a SF-5 or more restrictive zoning district or a SF-5 or more restrictive zoning district.

Vote: 8-0

Staff Recommendation (amended 8-24-06):

Staff recommends the Planning Commission's recommended changes with the following modifications:

1. To revise the regulations addressing a mobile food establishment as an accessory use in Part 2, paragraph (K) to add restrictions as follows:
 - (3) may only operate between the hours of 6:00 a.m. and 10:00 p.m., if the mobile food establishment use is located within 300 feet of a residential use allowed in a SF-5 or more restrictive zoning district or a SF-5 or more restrictive zoning district. If the mobile food establishment use is located over 300 feet away from a SF-5 or more restrictive zoning district or a SF-5 or more restrictive zoning district, then the establishment may operate between the hours of 6:00 a.m. and 3:00 a.m..
2. To allow a 60 day grace period for the enforcement of the new setback and hours of operation provisions that would apply to "opt-in" neighborhoods or areas with adopted neighborhood plans. This would allow noncompliant mobile food establishment operators to relocate to new sites in compliance with the Code in a timely manner.

City Council Date and Action:

June 8, 2006: City Council approves the original interim mobile food establishment ordinance. (Vote: 6-0, Council Member McCracken temporarily off the dais.)

August 31, 2006:

Ordinance Readings:

1st

2nd

3rd

Ordinance Number:

City Staff: Greg Guernsey

Phone: 974-2387

greg.guernsey@ci.austin.tx.us

Ordinance No. _____

*Ordinance
handed out
by CM Alvoary
at 4/20 con
mtg*

AN ORDINANCE AMENDING CHAPTER 25-2 OF THE CITY CODE TO PROHIBIT SALES FROM A MOBILE FOOD ESTABLISHMENT LICENSED BY THE HEALTH AUTHORITY ON PROPERTY ZONED FOR A RESIDENTIAL BASE DISTRICT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 25-2 of the City Code is amended by adding a new section 25-2-864 (Mobile Food Establishments) to read as follows:

25-2-864 MOBILE FOOD ESTABLISHMENTS

- (A) This section applies to a mobile food establishment licensed by the health authority.
- (B) The sale of food and beverages from a mobile food establishment located outside the right-of-way on property zoned as a residential base zoning district is prohibited.
- (C) Notwithstanding any other provision of this code, the sale of food and beverages from a mobile food establishment located outside the right-of-way on property zoned as a commercial or industrial base zoning district is permitted.
- (D) The sale of food and beverage from a mobile food establishment at a site does not constitute a change of use or development of the site, and does not require approval and release of a site plan under Section 25-5-61, a revision to a released site plan under Section 25-5-61, or a site plan exemption under 25-5-2.

PART 2. The Council finds that the clarification of its policy that mobile food establishments may operate on non-residential private property within the City of Austin constitutes an emergency. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health and safety.

ATTACHMENT "A"

ORDINANCE NO. 20060608-120

AN ORDINANCE ESTABLISHING TEMPORARY REGULATIONS RELATING TO MOBILE FOOD ESTABLISHMENTS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. DEFINITIONS.

In this ordinance:

- (1) PERMIT HOLDER means the person to whom the health authority issues a permit for a mobile food establishment required by Chapter 10-3 (*Food and Food Handlers*) of the City Code.
- (2) MOBILE FOOD ESTABLISHMENT has the meaning established in Title 25, Part 1, Section 229.162 (*Definitions*) of the Texas Administrative Code and Section 10-3-1 (*Definitions*) of the City Code.
- (3) SOUND EQUIPMENT has the meaning established in Section 9-2-1 (*Definitions*) of the City Code.

PART 2. MOBILE FOOD ESTABLISHMENT REGULATIONS.

- (A) A mobile food establishment is not permitted on private property except as provided in this part.
- (B) A mobile food establishment:
 - (1) must be licensed by the health authority;
 - (2) is permitted in all commercial and industrial zoning districts, except in a neighborhood office (NO), limited office (LO), or general office (GO) zoning district;
 - (3) may not be located within 50 feet of a lot with a building that contains both a residential and commercial use;
 - (4) may not operate between the hours of 3:00 a.m. and 6:00 a.m.;
 - (5) may not be located within 20 feet of a restaurant (general) or restaurant (limited) use.

- (C) The noise level of the following types of equipment used in association with a mobile food establishment may not exceed 70 decibels when measured at the property line that is across the street from or abutting a residential use:
- (1) mechanical equipment; and
 - (2) sound equipment located outside of the mobile food establishment use.
- (D) A drive-in service is not permitted.
- (E) Exterior lighting must be hooded or shielded so that the light source is not directly visible to a residential use.
- (F) A mobile food establishment is limited to a sign attached to the exterior of the mobile food establishment. The sign:
- (1) must be secured and mounted flat against the mobile food establishment; and
 - (2) may not project more than six inches from the exterior of the mobile food establishment.
- (G) During business hours, the permit holder shall provide a trash receptacle for use by customers.
- (H) The permit holder shall clear the area around the mobile food establishment of litter and debris each day of operation.
- (I) A permanent water or wastewater connection is prohibited.
- (J) Electrical service may be provided only by:
- (1) temporary service or other connection provided by an electric utility; or
 - (2) an onboard generator.
- (K) A mobile food establishment is an accessory use and not subject to this ordinance if it:
- (1) is located on the same site as a restaurant (limited) or restaurant (general) use; and
 - (2) serves food provided by the restaurant (limited) or restaurant (general) use.

- (L) This ordinance does not apply to a mobile food establishment that is located on private property for three hours or less in a 24 hour period.
- (M) A site plan, site plan exemption, or temporary use permit is not required for the operation of a mobile food establishment.

PART 3. COMPLIANCE; PENALTY.

The permit holder shall comply with this ordinance. A violation of this ordinance is a Class C misdemeanor.

PART 4. PLANNING COMMISSION RECOMMENDATION.

The Planning Commission shall make a recommendation to the Council regarding the appropriate buffering between a mobile food establishment and a residential use. The City Manager shall present the recommendation the Council on or before August 31, 2006.

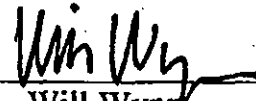
PART 5. This ordinance expires on September 29, 2006.

PART 6. This ordinance takes effect on June 19, 2006.

PASSED AND APPROVED


_____, June 8, 2006

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§
§



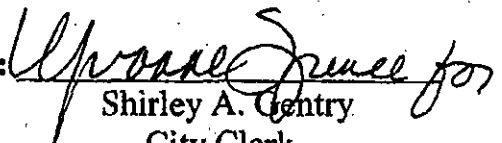
Will Wynn
Mayor

APPROVED:



David Allan Smith
City Attorney

ATTEST:



Shirley A. Gentry
City Clerk

PLANNING COMMISSION RECOMMENDATION

ORDINANCE NO. _____

#120
6-8-06

**AN ORDINANCE ESTABLISHING TEMPORARY REGULATIONS RELATING
TO MOBILE FOOD ESTABLISHMENTS AND CREATING A MOBILE FOOD
ESTABLISHMENT TASK FORCE.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS.

- (A) Mobile food establishments located on private property have not been recognized by the City in the past as a use that is permitted in the City.
- (B) Mobile food establishments have become a vibrant activity that contributes to the vitality of the City.
- (C) The Council desires to recognize mobile food establishments as a use that is permitted and to establish regulations applicable to the use.
- (D) During the period that the City is developing regulations for the use, the Council desires to establish temporary regulations that will permit the operation of a food establishment use until permanent regulations have been established.

PART 2. DEFINITIONS.

In this ordinance:

- (1) **PERMIT HOLDER** means the person to whom a mobile food establishment permit is issued.
- (2) **MOBILE FOOD ESTABLISHMENT** has the meaning established in Section 229.162 (*Definitions*) of the Texas Administrative Code and Section 10-3-1 (*Definitions*) of the City Code.
- (3) **SOUND EQUIPMENT** has the meaning established in Section 9-2-1 (*Definitions*) of the City Code.

ATTACHMENT "C"

1 **PART 3. MOBILE FOOD ESTABLISHMENT REGULATIONS.**

2 (A) A mobile food establishment is not permitted on private property except as
3 provided in this part.

4 (B) A mobile food establishment:

5 (1) must be licensed by the health authority;

6 (2) is permitted in all commercial and industrial zoning districts;

7 (3) may not be located within 50 feet of a lot with a building that contains
8 both a residential and commercial use;

9 (4) may not operate between the hours of 3:00 a.m. and 6:00 a.m.;

10 ~~(5)~~ may not be located within 300 feet of more than one mobile food
11 establishment that is on the same side of the street and in the same
12 block; and

13 (6) may not be located within 20 feet of a restaurant (general) or
14 restaurant (limited) use.

15 (C) The noise level of the following types of equipment used in association with
16 a mobile food establishment may not exceed 70 decibels when measured at
17 the property line that is across the street from or abutting a residential use:

18 (1) mechanical equipment;

19 (2) sound equipment located outside of the mobile food establishment
20 use.

21 ~~(D)~~ seating area for customers is prohibited.

22 ~~(E)~~ Four off-street parking spaces are required.

23 (F) A drive-in service is not permitted.

24 (G) Exterior lighting must be hooded or shielded so that the light source is not
25 directly visible to a residential use.

26 (H) A mobile food establishment is limited to a sign attached to the exterior of
27 the mobile food establishment. The sign:

- (1) must be secured and mounted flat against the mobile food establishment; and
 - (2) may not project more than six inches from the exterior of the mobile food establishment.
- (I) During business hours, the permit holder shall provide a trash receptacle for use by customers.
 - (J) The permit holder shall clear the area around the mobile food establishment of litter and debris each day of operation.
 - (K) A permanent water or wastewater connection is prohibited.
 - (L) Electrical service may be provided only by:
 - (1) temporary service or other connection provided by an electric utility; or
 - (2) an onboard generator.
 - (M) A mobile food establishment is an accessory use and not subject to this ordinance if it:
 - (1) is located on the same site as a restaurant (limited) or restaurant (general) use; and
 - (2) serves food provided by the restaurant (limited) or restaurant (general).

PART 4 APPLICATION; APPROVAL.

- (A) A person may file a temporary use permit application for a mobile food establishment with the building official. The person must file the application at least ten days before the requested date for beginning operation of the mobile food establishment.
- (B) An application must include a diagram and description of the mobile food establishment and additional information required by the building official.
- (C) After making a determination under Subsection (D), the building official shall approve, conditionally approve under Subsection (E), or deny an application not later than the 10th day after the date the application is filed.

1 (D) If the building official approves or conditionally approves an application the
2 building official shall issue a temporary use permit for a mobile food
3 establishment.

4 (E) A temporary use permit for a mobile food establishment is effective for one
5 year. A person must file a new application to continue beyond one year.

6 **PART 5. DETERMINATIONS.**

7 The building official may issue a temporary use permit after determining that the
8 mobile food establishment:

- 9 (1) complies with this ordinance;
10 (2) will not impair the normal, safe, and effective operation of a
11 permanent use on the same site;
12 (3) will not adversely affect public health, safety, or convenience;
13 (4) will not create a traffic hazard or congestion; and
14 (5) will not interrupt or interfere with the normal conduct of uses and
15 activities in the vicinity.

16 **PART 6. CONDITIONS OF APPROVAL.**

17 The building official may condition the approval of a temporary use permit for a
18 mobile food establishment on compliance with additional requirements that the building
19 official determines are necessary to minimize adverse effects on nearby uses, including
20 traffic circulation, screening, site restoration, and cleanup.

21 **PART 7. SITE RESTORATION.**

22 On termination of a mobile food establishment use, the permit holder shall remove
23 all debris and litter from the site.

24 **PART 8. TASK FORCE CREATED.**

25 The Mobile Food Establishment Task Force is created. The Task Force shall
26 present a recommendation for permanent mobile food establishment regulations to
27 Council on or before August 31, 2006.

28 **PART 9. This ordinance expires on September 29, 2006.**

1 **PART 10.** This ordinance takes effect on _____, 2006.

2
3 **PASSED AND APPROVED**

4
5
6
7 _____, 2006

§
§
§

Will Wynn
Mayor

10
11
12 **APPROVED:** _____

13 David Allan Smith
14 City Attorney

ATTEST: _____

Shirley A. Gentry
City Clerk

DRAFT

ARTICLE 6. TEMPORARY USES.

§ 25-2-921 TEMPORARY USES DESCRIBED.

(A) The following may be permitted by the building official as temporary uses under this division:

(1) model homes or apartments and related real estate services, if the use is located within the residential development to which the use pertains;

(2) a circus, carnival, rodeo, fair, or similar activity, if the use is located at least 200 feet from a dwelling and located in a CS or less restrictive zoning district;

(3) an outdoor art or craft show or exhibit, if the use is located in an LR or less restrictive zoning district;

(4) Christmas tree sales;

(5) an on-site construction field office, if the use is located in a portable structure and conducted for not more than 6 months;

(6) seasonal retail sale of agricultural or horticultural products, if the use is located at least 200 feet from a dwelling and located in an LR or less restrictive zoning district;

(7) seasonal day care, if the use is conducted for not more than eight hours a day and not more than 30 days a year; and

(8) temporary day care, if the use is conducted for not more than eight hours a day and not more than 12 hours a week.

(B) A sales office for a new subdivision may be permitted as a temporary use under this division if the sales office is located within the subdivision and at least 200 feet from existing dwellings outside the subdivision.

(1) A sales office for a new subdivision may not be operated after:

(a) the expiration of four years from the date the first construction permit issued in the subdivision; or

(b) the date by which 95 percent of the lots are sold.

(2) The board of adjustment may grant an extension of the deadlines described in this subsection.

(C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:

(1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;

(2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or

(3) for an exhibit, the use is located in a GR or less restrictive zoning district.

(D) A single dwelling located in a mobile structure on a construction site may be permitted as a temporary use under this division if the building official determines that the dwelling is required to provide security against nighttime theft or vandalism. The building official may allow the use for a period of up to 6 months and, if requested by the applicant, may extend that period for an additional 6 months. An applicant may appeal to the board of adjustment a denial of the use by the building official.

(E) An outdoor special sale, including a swap meet, flea market, parking lot sale, or similar activity may be permitted as a temporary use under this division if the use is located in a commercial or industrial zoning district. An outdoor special sale may be conducted on not more than three days in the same week and not more than five days in the same month.

(F) The building official may permit other temporary uses that are similar to those described in this section.

Source: Section 13-2-321; Ord. 990225-70; Ord. 031211-11.

§ 25-2-922 APPLICATION; APPROVAL; AND EXTENSION.

(A) A person may file an application to conduct a temporary use with the building official. The person must file the application at least ten days before the requested date for beginning the temporary use.

(B) An application must include a diagram and description of the use and all additional information required by the building official to make a determination under this division.

(C) After making a determination under Section 25-2-923 (*Determinations*), the building official shall approve, conditionally approve under Section 25-2-924 (*Conditions Of Approval*), or deny an application for a temporary use not later than the 10th day after the date the application is filed.

(D) If the building official approves or conditionally approves a temporary use, the building official shall issue a building permit, certificate of occupancy, or temporary use permit.

(E) Except as provided in Subsection (F), the building official may renew or extend an authorization for a temporary use if requested by the applicant.

(F) Unless further limited by the requirements of this division, a temporary use may continue for not more than one year. An applicant must file a new application to continue a temporary use beyond that period.

Source: Sections 13-2-324 and 13-2-325; Ord. 990225-70; Ord. 031211-11.

§ 25-2-923 DETERMINATIONS.

The building official may permit a temporary use after determining that the temporary use:

- (1) will not impair the normal, safe, and effective operation of a permanent use on the same site;
- (2) will be compatible with nearby uses;
- (3) will not adversely affect public health, safety, or convenience;
- (4) will not create a traffic hazard or congestion; and
- (5) will not interrupt or interfere with the normal conduct of uses and activities in the vicinity.

Source: Section 13-2-323; Ord. 990225-70; Ord. 031211-11.

§ 25-2-924 CONDITIONS OF APPROVAL.

The building official may condition the approval of a temporary use on compliance with additional requirements that the building official determines are necessary to ensure land use compatibility and minimize adverse effects on nearby uses, including requirements for hours of operation, frequency of use, parking, traffic circulation, screening, enclosure, site restoration, and cleanup.

Source: Section 13-2-322(b); Ord. 990225-70; Ord. 031211-11.

§ 25-2-925 SITE RESTORATION.

On termination of a temporary use, the person engaging in the temporary use shall remove all debris, litter, and other evidence of the use from the site.

NavarroLaw, P.L.L.C.

WILFRED NAVARRO
Tel: 512.328.7224 Fax: 512.366.9300



P. O. Box 161345
Austin, TX 78716-1345

2601 East Seventh
Austin, TX 78702

ATTORNEY & COUNSELOR
CERTIFIED PUBLIC ACCOUNTANT

August 21, 2006

Mr. Greg Guernsey
City of Austin
Neighborhood Planning & Zoning
505 Barton Springs Rd., 5th Fl.
Austin, TX 78704

Via Electronic Mail: greg.guernsey@ci.austin.tx.us

Dear Mr. Guernsey,

Thank you for returning my telephone call. As we discussed, it is my understanding that the Planning Commission is considering recommending to the Austin City Council that it adopt certain permanent rules affecting the operation of mobile food vendors within the city limits of Austin. One proposal being considered would be a ban on the operation of mobile vending trailers within one-hundred feet of lots zoned for single family dwellings. On behalf of small-lot owners along East Seventh Street, I am asking the Commission to consider the effect such a rule will have on the nascent development taking place on East Seventh Street and others such streets similarly situated.

The East Seventh Street Corridor is *the* commercial corridor for the east side of Austin. In fact, the Holly Neighborhood Plan ("Plan") recognizes the East Seventh Street corridor as the "gateway to Downtown." Accordingly, the neighborhood has a stated objective to "[p]romote E. 7th Street as a gateway to Downtown that incorporates commercial uses but addresses services needed in the surrounding neighborhood." Objective 1.1 of the Plan. The proposed rules would be contrary to this objective, discouraging further commercial development of East Seventh Street, due to the physical layout of lots fronting East Seventh Street.

It is our understanding that the proposed rules would prohibit the operation of mobile vending stands within 100 feet of a single family lot. In many circumstances, in older urban neighborhoods where mixed used development is being encouraged, this rule would prohibit the operation of a mobile food vending stand on a lot zoned for commercial uses because the commercial lots are less than 100 feet in depth and are next to a lot zoned for single-family uses. Attached is Exhibit "A," depicting a block along Seventh Street wherein commercially zoned lots facing East Seventh are backed up to lots zoned for single-family uses. Many of the commercial lots depicted on Exhibit "A" are less than one-hundred feet in depth, measured from East Seventh Street, and in some cases are just over sixty feet in depth. Thus, the proposed rule would prevent a mobile food vendor from operating along East Seventh even though the lot is otherwise approved for such uses and such uses are consistent with neighborhood goals. Similar situations could most likely be found throughout much of Austin's central core.

The Commission is asked to adopt rules that would permit vendors to operate in "narrow lot" circumstances with reasonable restrictions. For example, the rules could permit the operation of a

mobile food vendor in the front ten feet of a commercial lot that is separated from a lot zoned for single family dwellings by a privacy fence. Alternatively, the Commission might consider regulating the distance from the mobile vending unit to nearest single family structure, not the boundary of the nearest lot zoned for single family use. Finally, the Commission is asked to consider that particular uses, especially uses that incorporated foods appropriate for families such as snow cones, ice creams, corn-on-the cob, and similar such items, would not suffer if permitted to operate between the hours of 9:00 a.m. and 9:00 p.m. regardless of the stand's distance to a lot zoned for single family dwelling.

Development along the Seventh Street corridor, like many corridors in the inner city, is being encouraged. In particular, the City has encouraged mixed uses on urban lots such as those situated along East Seventh Street. These mixed uses sometimes include a denser use of the property than might be contemplated in other parts of the city. The Commission is encouraged, therefore, to adopt final rules that include provisions for mobile food vendors to operate along streets such as East Seventh.

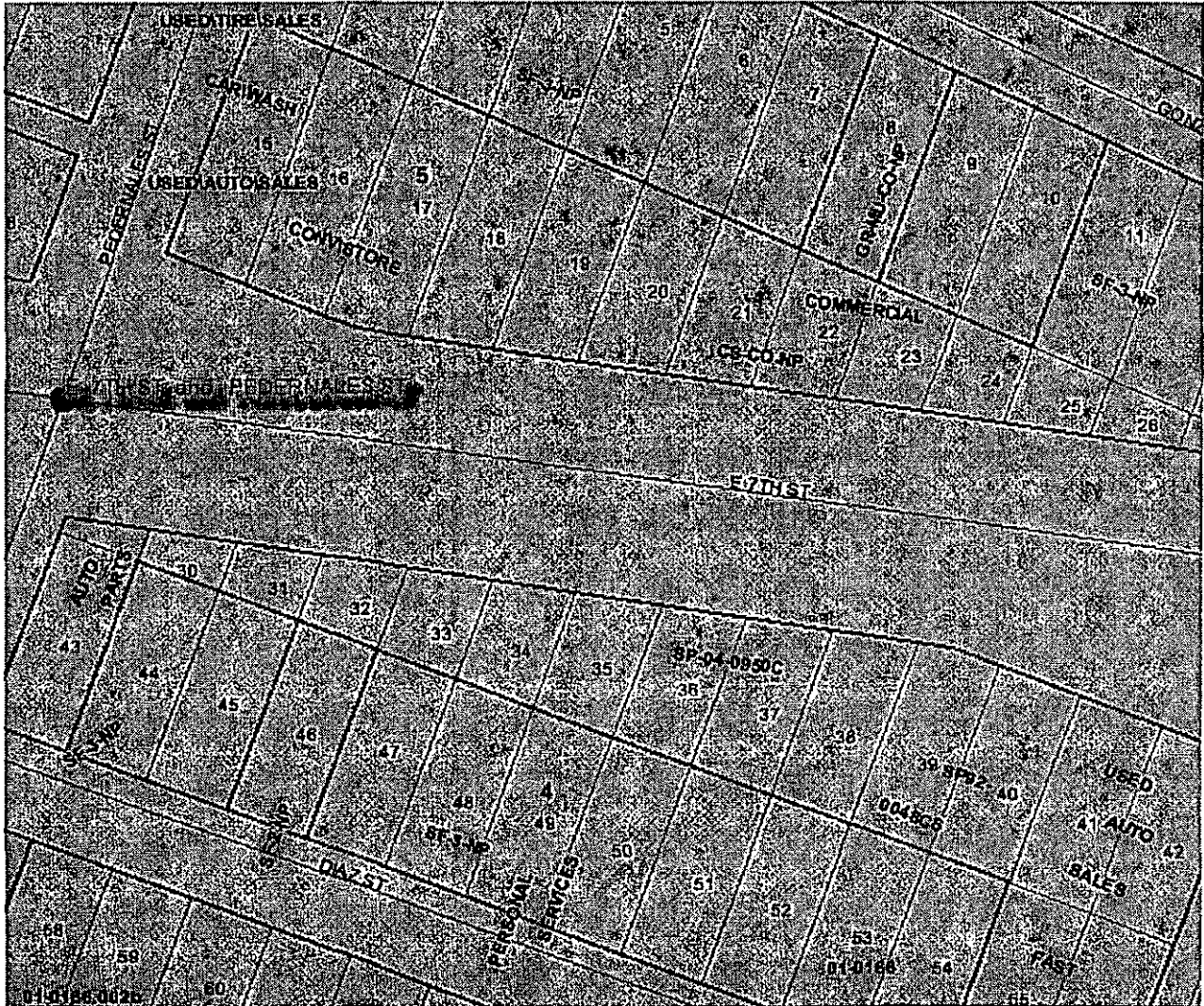
Your consideration is appreciated.

Sincerely,

NAVARROLAW, P.L.L.C.

By:


Wilfred Navarro



Rec. 8/22/06

RE: Item 5: Mobile Food Units Code Amendment: C20-06-007

Dear Chairman Sullivan and Commissioners:

For this ordinance to truly help residential neighborhoods, the MVU Ordinance should apply *equally* to all MVUs. The problems associated with the late night hours are the same for true MVUs and those identified as restaurant accessory uses.

Numerous complaints about noise, trash and unruly crowds have been made repeatedly concerning the El Taquito MVU on Old E. Riverside. After three years, there still is no restaurant on this site, but the City has allowed this MVU to operate as a restaurant accessory use. Under the proposed Ordinance, the El Taquito MVU would be exempt from regulation, would continue to have an economic advantage over the true MVUs, and would continue to cause problems for the abutting residential neighborhood.

- The MVU ordinance should not exempt restaurants from regulations applied to other MVU operators.

Another concern about the proposed Ordinance is paragraph 2.L, "[t]his ordinance does not apply to a mobile food establishment that is located on private property for three hours or less in a 24 hour period." This would allow an MVU to set up shop on private property that abuts a residential neighborhood and operate for 3 hours regardless of the time and distance regulations. An MVU could enter a parking lot and drive up to the residential property line at 2 or 3 am and operate until 5 or 6 am, or an MVU could enter the private property parking lot, open up at the residential property line at 10 pm and operate until 1 am.

- The time and distance regulations should be applied uniformly without exception. Please delete paragraph 2.L from the Ordinance.
- Please support the following hours of operation and residential distance limits, measured from the residential property line, for *all* MVUs:
 - Prohibit any MVUs within 100 feet of any residence;
 - 100 feet to 300 feet from any residence, 6am to 10pm; and
 - More than 300 feet from any residence, 6am to 3am.
- We support the requirements for security guards between the hours of 10pm and closing for sites of a certain size and the clean-up of litter during hours of operation and at closing.
- Also, we do not see a need to prohibit licensed MVUs from operating in office zoning districts as required in paragraph 2(B)((2).

Thank you for your consideration.

Sincerely,

Toni House for the South East Coalition, 1503 Inglewood, Austin TX 78741 (Ph. 225-0016)
(Members: Burleson Heights Neighborhood Assoc.; Riverside Farms Neighborhood Assn.;
Sunridge Neighborhood Assn.; Crossing Gardenhomes HOA; Southeast Austin Neighborhood
Alliance; South River City Citizens)