

## ORDINANCE NO. 1071

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AMENDING TITLE 9, CHAPTER 3, SECTION 9-3.1725 OF THE LOS BANOS MUNICIPAL CODE REVISING REGULATIONS REGARDING MOVEABLE STRUCTURE BUSINESSES

The City Council of the City of Los Banos does ordain as follows:

Section 1. Title 9, Section 9-3.1725 of the Los Banos Municipal Code is hereby amended to replace in its entirety the existing section to read as follows:

Sec. 9-3.1725 Mobile Vending.

#### **9-3.1725.010 Purpose.**

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

#### **9-3.1725.020 Definitions.**

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

B. "Mobile vendor" shall mean any person engaged in the business of selling prepared, pre-packaged or unprepared, unpackaged food or foodstuffs of any kind, goods, wares, merchandise, or any other thing of value from a mobile vending unit on private or public property.

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

D. "Vend" or "Vending" shall mean the sale of prepared, pre-packaged or unprepared, unpackaged food or foodstuffs of any kind, goods, wares, merchandise, or any other thing of value from a mobile vending unit on private or public property.

**9-3.1725.030 Permit required.**

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

**9-3.1725.31 Permit period.**

All vendor permits issued by the City to operate on public right of way pursuant to section 9-1725.050 (A) shall be limited to a permit period of 180 consecutive days during any calendar year with the exception of mobile vendors selling prepared, pre-packaged or unprepared, unpackaged food or foodstuffs exclusively in business parks and/or active construction zones/areas as designated by the planning commission.

**9-3.1725.040 Application for Permit to Operate.**

A person desiring to engage in a mobile vendor operation shall submit a written application for a Permit to Operate in a form acceptable to and with all supporting information required by the City Planning Department. Such application shall be accompanied by a non-refundable, non-transferable application fee in an amount as established by resolution of the City Council. Any such permit shall be required to be renewed annually and a separate non-refundable, nontransferable application fee shall be paid yearly for such renewal application. Mobile vendors must have the permit in their possession when vending. Permits to Operate are nontransferable.

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

B. Every mobile vendor shall obtain a City of Los Banos Business License.

C. As part of the Permit to Operate application, the mobile vendor shall provide the following:

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

2. Legal names of the mobile vendor and all persons operating or vending out of the mobile vending unit.

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

4. Designation of period of operation (limited to one 180 consecutive day period during the calendar year) if located on public right of way.
5. Four photographs (showing different exterior views) of each mobile vending unit.
6. Dimensioned sample or rendering of proposed signage.
7. A copy of a current Merced County Environmental Health permit.
8. Proof of automobile insurance as required by the Vehicle Code (for mobile vending unit if applicable).
9. No person shall engage in, conduct or carry on the business of a mobile vendor unless there is on file with the planning department, in full force and effect at all times, documents issued by an insurance company authorized to do business in the State of California evidencing that the operator is insured under a liability insurance policy providing minimum coverage of \$1,000,000 for injury or death arising out of the operation of the mobile vending unit.
10. If the mobile vendor is operating on private property, the mobile vendor shall provide the following:
  - a. An affidavit in a form approved by the City from the property owner (if other than self) permitting the mobile vendor to locate on the site.
  - b. A site plan, including sufficient parking for the primary use and the mobile vendor, for all proposed stationary location(s). Parking spaces shall be marked as required by zoning regulations.
  - c. An affidavit from the business or location providing the required restroom facilities for food service workers, stating the hours that those facilities are being made available.

D. The following may constitute grounds for denial of a Permit to Operate or renewal application:

1. The proposed mobile vending activity does not comply with all applicable laws including, but not limited to, the applicable building, zoning, housing, fire, safety and health regulations;
2. The applicant is unable to obtain a business license due to a criminal background check;
3. The applicant has, within three (3) years immediately preceding the application filing date, had a permit to operate, vending license or similar permit suspended or revoked in another California jurisdiction;

4. The applicant has knowingly made a material misstatement in the application for a Permit to Operate;

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

E. The Planning Commission shall be the decision making authority for any initial application of a Permit to Operate. The Planning Director or designee shall be the decision making authority for any renewal application of a Permit to Operate.

**9-1725.050 Location.**

A. A mobile vendor may locate in the public right-of-way subject to the following conditions:

1. A mobile vendor shall not operate within three hundred (300) feet of any church, school grounds, park, playground or City-operated recreation center.

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

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

a. Residential zones:

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

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

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

b. Commercial zones:

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

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

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

c. Industrial zones:

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

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

d. Construction Zones and Business Parks:

i. Permitted days and hours of operation are Monday through Saturday from 8:00 a.m. to 5:00 p.m.

4. No mobile vendors shall be located or maintained on public property, including bicycle pathways, walking trails, public parks or inconsistent with any other City regulations;

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

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

B. A mobile vendor may locate on private property subject to the conditions as follow:

1. Be incidental to a primary use with a valid Business License; a mobile vending unit shall not be the primary use of a parcel. Mobile vending units shall not be permitted as an accessory use to a standalone parking lot;

2. Be located in a commercial or industrial zoning district. Mobile vendors shall not be located on private property in a residential zoning district;

3. Not be located on a vacant parcel;

4. Be located on pavement per City standards;

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

6. Not interfere with access, driveways, aisles, circulation or fire lanes and hydrants and shall not operate in a place where the operation will create an unsafe condition;
7. Comply with the requirements of the Merced County Environmental Health Department;
8. Not interfere with pedestrian movement or create a hazard for pedestrians; and
9. Not be located within 500 feet of a similar business (i.e. food truck cannot be located within 500 feet of a restaurant or flower stand within 500 feet of a flower shop).

**Section 9-1725.060 Operational Requirements.**

**A. Mobile Vending Unit:**

1. The mobile vendor shall display, in plain view and at all times, current permits and licenses.
2. While vending, drive wheels of the mobile vending unit shall be chocked in such a manner as to prevent movement.
3. The mobile vending unit shall be entirely self-sufficient in regards to gas, water and telecommunications. Should any utility hook-ups or connections to on-site utilities be used or required, the mobile vendor shall be required to apply for appropriate permits or receive approval by the appropriate City Department to ensure building and public safety and consistency with applicable building and zoning regulations.
4. The mobile vendor shall not discharge items onto the sidewalk, gutter, storm drainage inlets or streets.

**B. Appearance of Site:**

1. The site shall be maintained in a safe and clean manner at all times.
2. No tables, chairs, fences, shade structures or other site furniture, (permanent or otherwise) or any free standing signs shall be permitted in conjunction with the mobile vendor.
3. Any site improvements required for mobile vendor operations shall require application for the appropriate permits to ensure building and public safety and consistency with applicable building and zoning regulations.
4. Exterior storage of refuse, equipment or materials associated with the mobile food vendor is prohibited.

C. Amplification:

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

D. Sanitation:

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

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

3. All mobile vendors operating a mobile food facility as defined by the Health and Safety Code shall comply with Health and Safety Code section 114315 regarding the availability of adequate toilet facilities for use by food service personnel.

E. Safety and security:

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

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

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

**9-1725.070 Exemptions.**

A. Any person engaged in vending where such person has been authorized by the City of Los Banos to engage in such activity by a special event permit or other entitlements issued by the City of Los Banos.

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

**9-1725.080 Application of Other Laws and Regulations.**

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

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

C. The provisions of this Chapter shall not relieve any person from the provisions of the Health and Safety Code pertaining to the regulation of Mobile Food Facilities.

**1725.090 Suspension/Revocation of Permit to Operate.**

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

B. Revocation and suspension of Permit to Operate. When the City concludes that grounds for denial, suspension, revocation or refusal to renew a Permit to Operate exist, he or she shall serve the applicant or permit holder, either personally or by certified mail addressed to the business or residential address of applicant or permit holder, with a Notice of Denial or Notice of Intent to Suspend, Revoke or Refuse to Renew Permit.

This Notice shall state:

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

C. Hearings and Appeals. Hearings and appeals of the decision of the Planning Director or his designee or the Planning Commission shall be conducted in the same manner provided by Sections 9-3.2226 – 9-2228.

**1725.100 Applicability of Ordinance to existing businesses.**

A. The provisions of this Ordinance shall be applicable to all mobile vendors established after the effective date of the Ordinance.

B. All existing mobile vendors operating within the City shall be required to obtain a Permit to Operate and otherwise comply with this Ordinance upon the expiration of a current business license and/or application of a renewal of a current business license.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, subsections, sentences, clauses, phrases or portions of this ordinance shall nonetheless remain in full force and effect. The City Council hereby declares that it would have adopted each section, subsection, sentence, clause, phrase or portion of this ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions of this ordinance be declared invalid or unenforceable.

Section 3. The City Council finds that the project is categorically exempt from the provisions of CEQA, Section 15061(b)(3) – The activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 4. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law, or in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Brooks and seconded by Council Member Sousa on the 16<sup>th</sup> day of April 2008.

Passed on the 7<sup>th</sup> day of May 2008 by the following vote:

AYES: Council Members Brooks, Faria, Sousa, Mayor Jones  
NOES: Council Member Villalta  
ABSENT: None

APPROVED:

/s/ Tommy Jones

Tommy Jones, Mayor

ATTEST:

/s/ Lucille L. Mallonee  
Lucille L. Mallonee, City Clerk