

MEMORANDUM

TO: Chris Callahan, Deputy City Attorney

FROM: Victor Mehia, Executive Director

DATE: January 30, 2007

RE: City of Salinas Mobile Vendor Ordinances

Purpose

The purpose of this memo is to draw your attention to at least three instances where the City's existing or proposed mobile vendor ordinances may and/or will be incompatible with the State's Health and Safety Codes. In each instance, we believe the City's commitment to promote and protect the public's health and safety is compromised.

Background

As we first mentioned in a letter to the City back in 2005 and then again at last week's Council Meeting (January 23, 2007), the City's existing mobile and street vendor ordinances and permit programs are broken, and over the last 50 years they have helped to create a situation in which the catering trucks and other stationary mobile vendors that set up shop in the City are allowed to operate in direct violation of the State's Health and Safety Codes. Even where there is no intent on the part of the mobile vendor to violate a State law, it would seem that the City's ordinances create an incentive for some to make unwise and unsafe decisions regarding the way they operate their businesses.

We believe that mobile vendors, especially those stationary mobile vendors who operate in our area are caught between a rock and a hard place – they struggle on the one hand to comply with what seem to be conflicting and confusing rules, while on the other they must do what is necessary to meet the needs of their families.

The City's existing and proposed vendor ordinances seem to be in conflict or incompatible with at least three State Health and Safety Codes: 1) stationary mobile vendors must ensure their personnel has access to restrooms and hand washing facilities within 200 feet of the food preparation unit; 2) stationary mobile vendors must operate out of and regularly use the services of an approved commissary¹ facility; and 3) stationary mobile vendors must participate in a formal inspection and enforcement program. The perceived conflict and incompatibility arises when a stationary mobile vendor complies with the City's ordinances and takes full advantage of its programs, and consequently ends up violating a State law. The City's ordinances and

¹ According to the State's Health and Safety Code (Section 113750), "Commissary" means a food establishment in which food, containers, equipment, or supplies are stored or handled, food is prepared or prepackaged for sale or service at other locations, utensils are cleaned, liquid or solid wastes are disposed of, or potable water is obtained, for use in mobile food facilities, mobile food preparation units, stationary mobile food preparation units, or vending machines."

programs leave mobile vendors in the uncomfortable situation of having to choose between complying with the State's Health and Safety Codes which could result in earning less money and their need to earn enough money to support their families and sustain their businesses.

Access to Restrooms and Hand Washing Facilities

According to Section 114299.5 (f) of the State's Health and Safety Code, catering trucks that operate as stationary mobile food preparation units shall make adequate toilet facilities available to food service personnel within 200 feet of the truck whenever it is stopped to conduct business for more than a one-hour period. Most of the catering trucks that operate in east Salinas remain stationary for between eight and twelve hours. Many of these trucks are parked within 200 feet of a brick-n-mortar business. Presumably, some mobile vendors have entered into an agreement with the owners of a nearby business to provide food service personnel with access to adequate toilet and hand washing facilities. But what happens when the businesses near the catering trucks close for the night? Since most businesses in east Salinas (and across the city) are closed by midnight, how do the owners of these catering trucks comply with the State's requirement to provide food service personnel with access to toilet and hand washing facilities? On average, most food service personnel would have no access to restroom facilities for at least six to eight hours.

Daily Use of a Commissary

State law also requires "all" mobile food preparation units to operate out of a commissary. These businesses are to be stored, cleaned, and serviced at or within a commissary or other facility approved by the County's enforcement division "...so as to be provided protection from unsanitary conditions." Catering trucks shall report to the commissary at least once each operating day for cleaning and servicing. According to information we received from the County's Department of Environmental Health, mobile vendors such as catering trucks are normally required by the County to "check in" at the commissary at least several times each operating day. If the commissary that is used by a particular truck is closed or otherwise unavailable at the time the truck begins or ends its operating day, then what are these businesses doing to comply with Section 114287 of the State's Health and Safety Code? What kinds of "checks" are built into the City's licensing and permitting processes to ensure these businesses, by virtue of complying with the City's ordinances and vendor permit programs, are not put into the uncomfortable situation of having to violate State law in order to feed their families? How (if at all) does the City monitor and/or regulate those businesses that serve as commissaries to local mobile vendors, to ensure they are providing mobile vendors with the type of service and support that is required by State law?

Inspections and Enforcement

State law also establishes the rules for monitoring and/or inspecting mobile vendor operations, as well as the enforcement of relevant regulations. As the enforcement officer in Monterey County, the Health Department is charged with issuing permits, conducting inspections and gathering data, issuing citations, and carrying out other duties in an effort to promote public health and safety. We were reminded recently by both the Assistant Director of Environment Health and

the Monterey County Grand Jury that the County's mobile vendor inspection team does not have the capacity to fulfill its everyday responsibilities much less take on the additional workload associated with conducting inspections and enforcing the regulations when their offices are closed from 5:00 p.m. to 8:00 a.m. The law states that it is a violation for any mobile vendor to refuse to permit entry or inspection or to conceal any samples or evidence or withhold evidence concerning their operations. But the City's ordinances result in precisely this type of outcome by forcing mobile vendors to operate at a time during which inspection and enforcement do not exist. The City ordinances effectively create a "loop hole" thereby increasing the risk to public health and safety. What happens if the County cannot come up with the additional resources it would need to provide a special team of overnight inspectors and enforcement officers? Knowing that there are no inspectors or enforcement officers working the graveyard shift is the City willing to compromise its commitment and duty to promote and protect the public's health and safety?

For Your Consideration

If the City of Salinas adopts an ordinance that allows stationary mobile vendors to operate in the City from 6:00 p.m. to 6:00 a.m., and if as a result of following the City's ordinance a majority of the mobile vendors operating in the City are found to be in direct violation of the State's Health and Safety Codes...

- What message is the City really sending to the mobile vendors and any other business that sets up shop in Salinas?
- How can the City say it wants to help mobile vendors thrive and become prosperous when its proposed ordinances seem to be crafted in a way that sets up these businesses for an uncertain future or, worse, absolute failure?
- Does the City take on any additional liability by adopting ordinances and implementing programs that are incompatible with State law and then asking a particular set of businesses to comply with those rules and participate in those programs or risk losing their license to operate in the City of Salinas?

Let's assume the resources needed to beef up enforcement are found, and the County finds a way to put a special team of overnight inspectors and enforcement officers in place by August 1, 2007.

- Will the City then be forced to propose a new set of rules so that those mobile vendors found to be in violation of State law could continue to operate? In other words, will there eventually be two sets of rules for mobile vendors in the City of Salinas – one for those who are able to comply with the regulations and the other for those who can't comply due to circumstances beyond their control?
- If complying with the City's ordinance results in a mobile vendor being found guilty of violating State Health and Safety Codes, will the City help that particular business owner pay its fines, attorney's fees, the cost of securing a new business license and/or vendor permit, vehicle impound fees, the cost of replacing damaged or lost merchandise, and so on?

Recommendations

We believe the City must remain firm in its commitment to above all promote and protect the public's health and safety. The City should also keep in mind as it moves to resolve this issue that whether today or three years from now mobile vendors and other members of our community are going to experience the discomfort and frustration that comes from having to deal with significant change or major adjustment. The decision before the City cannot be about striking a balance (arriving at a compromise) between what Group A wants and what Group B wants. The final decision must reflect a clear understanding of the City's obligation to promote and protect its citizens' health and safety.

We recommend the City adopt the Draft Vendor Ordinance (January 8, 2007) that was prepared by the Council's Subcommittee and City Staff. The draft ordinance reflects the City's understanding of the importance of promoting and protecting the public's health and safety above all, while allowing ample opportunity for mobile vendors to decide between making the transition into a permanent establishment or remaining mobile and complying with State law.

In addition, we recommend the City leave the provision of small business incubation services to an organization such as SUBA which can focus on providing these important services and sustaining these efforts over the long term. The risk of having the City take this on as a program or project is that from year-to-year the City's priorities change, and the City will need to shift its focus and resources to address the priority de jour. An evaluation of the City's previous attempts to provide these services would confirm that this is indeed a valid concern.

As we mentioned at last week's Council meeting, SUBA and its partners are already working with a handful of mobile vendors, providing state-of-the-art incubation services free of charge using a virtual incubator concept that allows the mobile vendors to benefit from our services while continuing their operations within the law. We have already begun the process of building the capacities necessary to serve as the business resource center for The New Alisal. Establishing a business resource center is our priority, and we are working diligently to make this critical resource available within a short period of time.

SUBA is Here to Help

SUBA and its partners are committed to supporting mobile vendors and any other business that would request our services. We stand ready to work with the City and other stakeholder groups, to ensure mobile vendors have access to the resources they need to prosper whether as mobile vendors or permanent establishments.

If you have any questions or require additional information, please don't hesitate to call (831) 796-0896.