



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** September 15, 2015

**TO:** Ordinance Committee

**FROM:** Ariel Pierre Calonne, City Attorney  
John S. Doimas, Deputy City Attorney

**SUBJECT:** Amendments To The Peddling And Soliciting Ordinance  
Instituting Time, Place, And Manner Restrictions On Street  
Vending From Vehicles

### **RECOMMENDATION:**

That the Ordinance Committee review and comment upon proposed amendments to the City's peddling and soliciting ordinance that provide specific guidelines regarding the time, place, and manner of street vending, and that the Ordinance Committee forward its recommendations to the Council.

### **DISCUSSION:**

#### Problem Statement

Mobile Vendors are currently able to sell goods and services from vehicles parked on City streets at anytime and in any location. This vending poses a health, safety, and welfare threat because it can create conflicts with vehicles and pedestrian traffic, as well as using limited parking.

#### The Proposed Code Amendments

The changes to the City's ordinance regarding mobile street vending is required in order to comply with the California Court of Appeal ruling in *Barajas v. City of Anaheim* (1993) 15 Cal.App.4th 1809. In that case, the court determined that California cities cannot impose a blanket ban that prohibits vending from vehicles on all city streets. However, cities are able to draft ordinances that provide specific time, place, and manner restrictions on street vending due to public safety concerns.

Therefore, in order to prevent traffic congestion, and mitigate any threat to public safety that might result from conducting business through mobile vending in the public right of ways, the City Attorney's Office recommends the following

municipal amendments regulating the location, time, and duration of on street mobile vendors for public safety purposes:

- A prohibition against peddling earlier than 9:00 a.m. or later than 7:00 p.m.
- A prohibition against vending at one location over a sixty minute period of time and that no vendor shall operate within 500 feet of any preexisting location used on the same day.
- A prohibition against vending within 500 feet of any school (through grade 12) between the hours of 7:00 a.m. and 4:00 p.m. on school days.
- A prohibition against street vending on certain streets within the City's business district in order to mitigate impacts to the availability of limited existing on street parking and enhance traffic flow (Attachment 1).

### Legal Issues

#### A City May By Ordinance Adopt Additional Requirements Regulating The Time, Place, and Manner of Vending From Vehicles Upon Any Street For The Public Safety

Santa Barbara Municipal Code (SBMC) Chapter 5.32 governs peddlers and solicitors. A peddler is defined as "any person who goes from place to place, or from house to house, for the purpose of selling or offering for sale, or leasing or offering for lease, any goods, wares, merchandise, fruits, vegetables, foodstuffs or anything whatsoever." The City requires a permit to peddle or solicit in the City, but has a list of prohibited types of peddling and soliciting contained in SBMC Section 5.32.035. Currently, SBMC Section 5.32.035(a)(1) prohibits peddling or soliciting "on or in any street within the City."

The California Vehicle Code (CVC) limits local governments' ability to specifically regulate mobile food or non-food vendors on public streets to their detriment unless there is a public safety concern. In 1992, the Anaheim City Council adopted amendments to its City Code which made it unlawful for any person to sell (including from any vehicle) on any public property within any residential zone. The street vendors who had previously been selling produce from vehicles on streets in residential areas sued alleging that the ordinance was preempted by the CVC. In *Barajas v. City of Anaheim* (1993) 15 Cal.App.4th 1809, the California Court of Appeal held that the City of Anaheim's ordinance prohibiting vending from vehicles parked on residential areas was preempted by the Vehicle Code Section 22455.

In 2008, fifteen years after the *Barajas* decision, Assembly Bill 2588 amended CVC Section 22455 and authorized cities to impose time, place, and manner restrictions on commercial vehicle vendors for public safety purposes. CVC Section 22455(b) allows for the adoption of local ordinances that regulate the type of vending and the time, place, and manner of street vending, but only for the purpose of public safety. Given the current State law, the City is limited in regulating location, times and duration of vending trucks on the street. Courts have consistently struck down mobile vending regulations enacted by other municipalities that either completely bans all vending on City streets or ordinances that rely on justifications other than public safety, such as the need to protect local brick-and mortar businesses from mobile competition.

We are proposing to amend the City's ordinance by eliminating language that that places a blanket ban on peddling and soliciting in City streets, and instead regulate the time, place, and manner in which vending may occur in order to comply with the CVC, as well as meet the safety needs of the community. The amendments are applicable to both food and non-food vendors.

**CONCLUSION:**

We believe the proposed changes to the existing ordinance place reasonable time, place and manner restrictions on the operation of mobile vending vehicles or any non-motorized wheeled container within the public right of way. These amendments address public safety concerns that may arise by drivers making illegal maneuvers to access vending trucks and pedestrians walking into the streets to avoid food-truck customers who are blocking the adjacent sidewalks. The proposed amendments also limit or eliminate vending in already traffic congested areas and deals with security, trash collection, and general public nuisance concerns such as odors permeating the surrounding area.

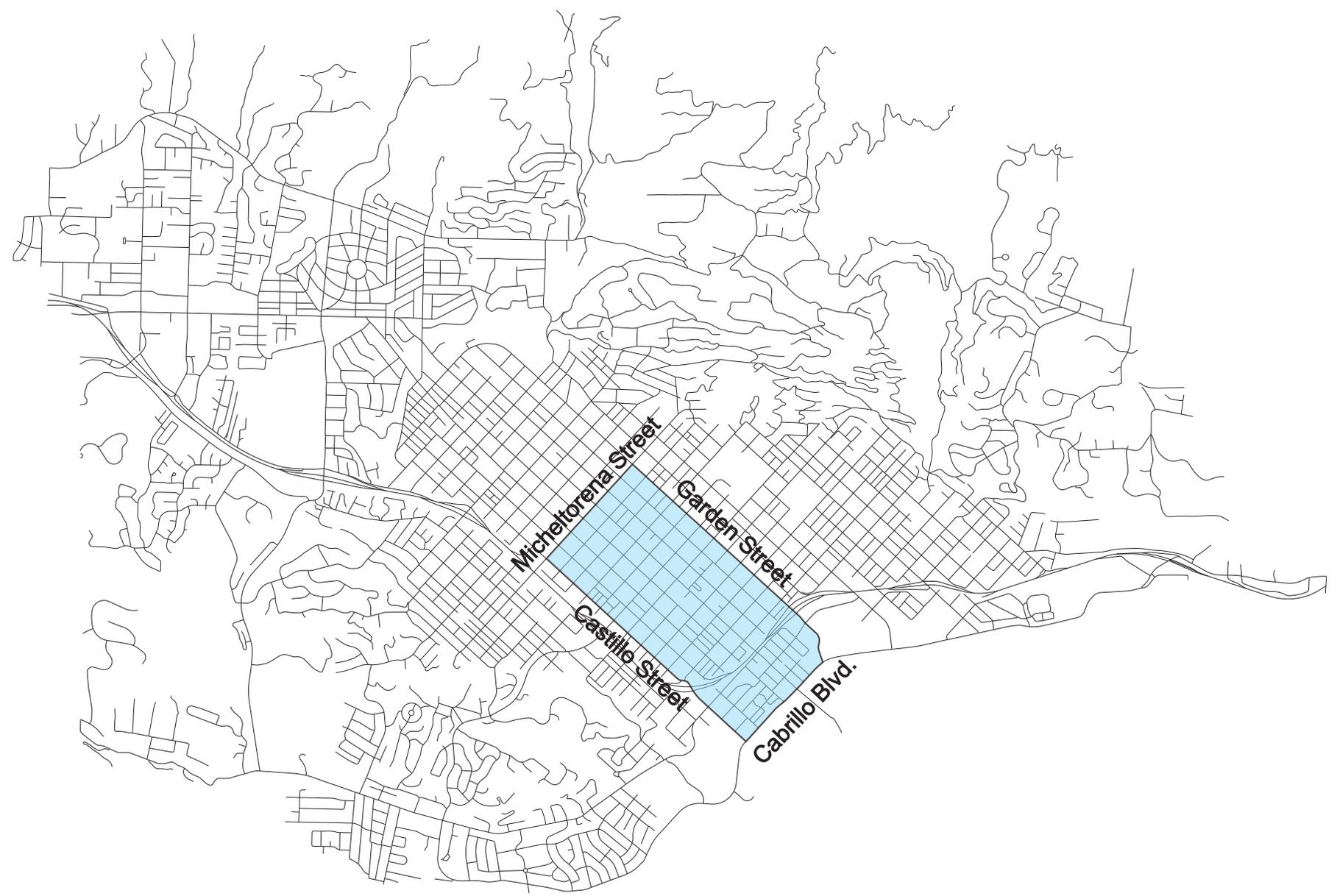
**ATTACHMENT(S):** 1. Map of Mobile Vending Parking Restricted Area  
2. Draft Ordinance

**PREPARED BY:** John S. Doimas, Deputy City Attorney

**SUBMITTED BY:** Ariel Pierre Calonne, City Attorney

**APPROVED BY:** City Administrator's Office

# Mobile Vendor Parking Restricted Area, April 28, 2015



STAFF DRAFT 9/15/15 SHOWING  
CHANGES FROM CURRENT CODE

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY  
OF SANTA BARBARA AMENDING SECTION  
5.32.035 OF THE SANTA BARBARA MUNICIPAL  
CODE TO ESTABLISH TIME, PLACE, AND  
MANNER RESTRICTIONS ON VENDING FROM  
VEHICLES, WAGONS, AND PUSHCARTS

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS  
FOLLOWS:

SECTION 1. Findings and purposes (uncodified).

A. The City Council finds that it is in the interest of the public health, safety and the general welfare of the community that time, place, and manner restrictions be established with respect to the operation and location of mobile vending vehicles or any non-motorized wheeled container, such as a wagon or pushcart upon any City street.

B. Time, place, and manner restrictions for vending on City streets are necessary to ensure pedestrian safety , control excessive demand on parking spaces particularly within the City's business district, enhance traffic circulation movement, and prevent aesthetic blight from unsightly accumulation of waste in public right of way areas.

C. The City Council further finds that mobile vending vehicles and non-motorized wheeled containers such as a wagon or pushcart, on City streets poses traffic hazards and special dangers to residents of the community. Such vending vehicles frequently stop in public rights of way in a manner which can endanger pedestrians and vehicle traffic particularly in areas of heavy traffic volume.

D. This ordinance is enacted pursuant to the City's police power under Article

XI section 5 and 7 of the California Constitution and Vehicle Code section 22455(b). Vehicle Code section 22455(b) expressly authorizes time, place, and manner municipal regulation of vending from vehicles upon any street.

SECTION 2. Section 5.32.035 of Chapter 5.32 of Title 5 of the Santa Barbara Municipal Code is amended to read as follows:

**5.32.035 Prohibited Types of Peddling and Soliciting.**

A. Except as otherwise authorized in this Code, it shall be unlawful for any peddler or solicitor to do any of the following:

~~1. To peddle or solicit on or in any street within the City.~~

1. 2. To peddle or solicit at any residence, dwelling, flat or apartment whereon a sign bearing the words “no peddler or solicitor” or words of similar meaning, indicating peddlers or solicitors are not wanted on the premises, is painted or affixed or exposed to the public view, or to attempt to gain admittance to such premises for the purpose of peddling or soliciting, except with the prior consent or at the prior invitation of some member of the household.

2. 3. To peddle or solicit within the City ~~at any time from~~ earlier than 9:00 a.m. or later than 7:00 p.m. sunset to nine o'clock (9:00 a.m.), except by prior appointment.

~~4. To peddle or solicit at any place within any commercial or industrial district as established in the Zoning Ordinance of the City.~~

3. Except as provided in this section, no vendor shall stand, stop or park any vehicle or any non-motorized wheeled container, such as a wagon or pushcart.

STAFF DRAFT 9/15/15 SHOWING  
CHANGES FROM CURRENT CODE

from which merchandise, food, or other items are sold or displayed or offered for sale, barter or exchange, on any portion of any street, alley, sidewalk or public property within the city for a period of time that exceeds sixty minutes at any one location; provided, however, that such vehicle or any non-motorized wheeled container may not stand or park at all in a place described in subsection (B)(3) of this section.

4. Any vending conducted at a location within five hundred (500) foot radius of any other location used in that same day shall constitute one (1) single location, and the sixty (60) minute time limit shall apply. For the purposes of this Section, distance shall be from location to location along the shortest possible straight-line distance, regardless of any customary or common route or path of travel, i.e. "as the crow flies."

5. No person shall stand, park or operate any vehicle or any non-motorized wheeled container within or from the public right-of-way at the following locations; those streets bounded by and including: Castillo Street, Micheltorena Street, Garden Street, and Cabrillo Boulevard (as depicted on the map attached to this chapter entitled "Mobile Vendor Parking Restricted Area, September 15, 2015").

6. No vendor shall stand, stop or park any vehicle or any non-motorized wheeled container within five hundred (500) feet of any public or private school (through grade 12) between the hours of 7:00 a.m. and 4 p.m. during operational school days.

7. Every person operating such vehicles or containers shall have in his or her possession a valid business license to peddle issued by the city as required under Santa Barbara Municipal Code Section 5.32.040.

8. When standing or parking at the request of a bona fide purchaser, as permitted by subsection (A)(1) of this section, the person operating such vehicle or container shall:

a. Stop playing music, ringing bells or making other noise that advertises such person's presence or wares; and

b. Provide a visible trash receptacle for use by bona fide purchasers.

9. No street vendor vehicle or any extension thereof-such as mirrors, shall obstruct the movement of pedestrians or other vehicles using the street or sidewalk in a residential neighborhood. No motor vehicle shall roll up onto the sidewalk of any street bounded by rolled curbs or otherwise block pedestrian sidewalk access.

10. Mobile vending vehicles are required to have wide angle mirrors adjusted to clearly see the areas surrounding the front and rear of the vehicle. A Mobile vending vehicle is required to have the sales window at the sidewalk side of the vehicle at all times.

B. Subsection A of this Section shall not apply to persons delivering articles upon order of or by agreement with a customer from a store or other fixed place of business or distribution.

C. Subsections A2 to A10 of this Section shall not apply to the following;

1. Any person who is a certified producer authorized to participate and participating in a Certified Farmers Market, as defined, authorized and permitted in accordance with the provisions of Title 3, Chapter 3, Subchapter 1, Group 4, Article 6.5

of the California Code of Regulations (herein after, the “Market”).

2. A person selling non-certified goods at and during the Market (i) who sells only the type or types of goods currently authorized by the Council to be sold at the Market and (ii) who has been issued and has in her or his possession an original, currently valid certificate signed by the Manager of the Market and showing that she or he has been authorized by the manager of the Market to sell non-certified goods at the Market.

3. Any person who has obtained a Special Event Permit from the City regarding the parades of Summer Solstice Celebration and Old Spanish Days.

D. Subsection A5 of this Section shall not apply to (1) selling or taking orders in commercial or industrial establishments for goods, wares, merchandise or services to be used in connection with the operation or maintenance of the business; or (2) selling or offering for sale newspapers, magazines and periodicals in the present customary and usual manner of selling and offering for sale of newspapers, magazines and periodicals in the City.

### SECTION 3. Environmental Quality Act Exemption.

This ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Section 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment, and Section 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.

# City's Proposed Amendments to the Peddling and Soliciting Ordinance



# **Santa Barbara Municipal Code**

## **Chapter 5.32**

- Chapter 5.32 of the municipal code governs peddlers and solicitors, which includes street vending vehicles and non-motorized wheeled containers such as a wagon or pushcart.

# Central Issues behind the Proposed Amendments

- SBMC 5.32.035(A)(4) makes it unlawful to vend from vehicles parked on City streets at any time and any location.

# Why SBMC 5.32.035 is Ineffective

- *Barajas v. City of Anaheim* determined that California cities cannot impose a blanket ban that prohibits vending from vehicles on all city streets. Therefore, the City cannot enforce SBMC 5.32.035(A)(4) as currently written.
- The *Barajas* Court did say that Cities can draft ordinances that provide time, place, and manner restrictions on street vending.

# Solutions

- To mitigate any threat to public safety, the City Attorney's Office recommends amending SBMC 5.32.035 to provide time, place, manner restrictions while at the same time being compliant with the ruling in *Barajas* case.

# Proposed Amendments

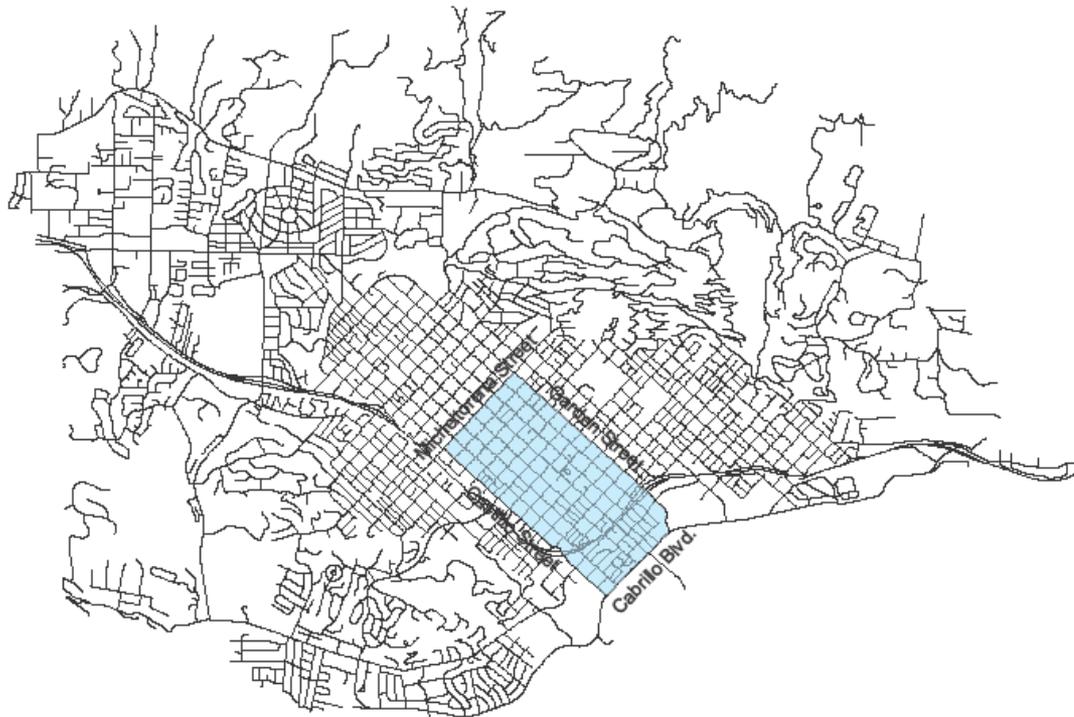
1. Prohibit peddling or soliciting within the City earlier than 9:00 a.m. or later than 7:00 p.m.
2. No vending at one (1) location longer than sixty (60) minutes.
3. No vending within five hundred (500) feet of any public or private school grades K-12.

# Proposed Amendments

4. Prohibit vending on specific City streets to prevent traffic congestion and allowing accessible parking.
  - The specific streets are bounded by and including: Castillo Street, Micheltorena Street, Garden Street, and Cabrillo Boulevard.

# Proposed Amendments

Mobile Vendor Parking Restricted Area, April 28, 2015



# Proposed Amendments

5. Street vendors are prohibited from obstructing the movement of pedestrians and other vehicles using the street or sidewalk in residential neighborhoods.
6. Street vendors are required to have their sales window at the sidewalk side of the vehicle.

# Proposed Amendments

7. Street vendors are required to provide trash receptacles and are prohibited from playing music, bells, or other loud noises when standing or parked.