

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

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August 9, 2011

**FROM: GREGORY C. DEVEREAUX, Chief Executive Officer
County Administrative Office**

**SUBJECT: REPORT ON COUNTY ORDINANCE GOVERNING HOT FOOD TRUCK
OPERATIONS**

RECOMMENDATION(S)

Receive staff report related to the County's ordinance governing hot food truck operations in San Bernardino County and provide direction with respect to any further action to be taken.

(Affected Districts: All)

(Presenter: Terri S. Williams, Chief, Environmental Health Services, 387-3891)

BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES

Create, Maintain and Grow Jobs and Economic Value in the County.

Maintain Public Safety.

Provide for the Health and Social Services Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Governmental Agencies.

FINANCIAL IMPACT

This action does not involve a federal program or the use of any federal funds. This item is non-financial in nature and therefore does not impact discretionary general funding (net county cost).

BACKGROUND INFORMATION

On February 8, 2011, at the request of Second District Supervisor Janice Rutherford, the Board of Supervisors (Board) authorized staff to conduct research related to the San Bernardino County (County) ordinance governing hot food trucks. This research included identifying and analyzing state and local regulations related to the operation of mobile food vendors in this County, and in other jurisdictions throughout the State.

Regulatory Framework

The State of California has instituted comprehensive regulations to maintain health and sanitation standards in retail food facilities in the State. This regulatory scheme is included in the Health and Safety Code (§ 113700 *et seq.*), and is commonly referred to as the California Retail Food Code, frequently abbreviated as "Cal Code." Except as provided in § 113709, the Cal Code was intended by the Legislature to occupy the entire field of health and sanitation standards for retail food facilities (§ 113705). Section 113709 provides for the following:

§ 113709 This part does not prohibit a local governing body from adopting an evaluation or grading system for food facilities, from prohibiting any type of food facility, from adopting an employee health certification program, from regulating the provision of consumer toilet and handwashing facilities, or from adopting requirements for the public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon a street pursuant to its authority under subdivision (b) of Section 22455 of the Vehicle Code.

The State relies on local enforcement agencies (LEA's) which have the primary responsibility for enforcement of the Cal Code (§ 113713). The Environmental Health Services Division (DEHS) of the Department of Public Health is the LEA authorized to interpret, apply and enforce the Cal Code throughout the County, including within incorporated cities and towns.

The Cal Code identifies three basic categories of retail food facilities as follows, and health and safety regulations vary according to category:

1. Permanent facilities such as restaurants and markets;
2. Temporary food facilities operating at a fixed location for community events; and,
3. Mobile food facilities such as vehicles or carts.

Per § 113831, any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail is a mobile food facility (MFF). Catering trucks (from which pre-packaged food is sold) and hot food trucks (on which the food is prepared and then sold) are both MFFs. Cal Code Chapter 10 (§§ 114294-114327) outlines the applicable health and safety requirements, certifications and approvals for MFFs and the authority for the permitting and enforcement of these regulations, which is delegated to the LEA's by the State of California [§114294(b)]. Section § 114315, located within the chapter related to MFF's, includes the following provisions:

§ 114315 (a) A food facility shall be operated within 200 feet travel distance of an approved and readily available toilet and handwashing facility, or as otherwise approved by the enforcement agency, to ensure that restroom facilities are available to facility employees whenever the mobile food facility is stopped to conduct business for more than a one-hour period.

(b) This section does not limit the authority of a local governing body to adopt, by ordinance or resolution, additional requirements for the public safety, including reasonable time, place, and manner restrictions pursuant to its authority under subdivision (b) of Section 22455 of the Vehicle Code.

The above-cited section [§ 22455(b)] of the California Vehicle Code reads as follows:

§ 22455(b) Notwithstanding subdivision (a) of Section 114315 of the Health and Safety Code or any other provision of law, a local authority may, by ordinance or resolution, adopt additional requirements for the public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon any street.

As the LEA for the County, DEHS has historically and continuously recommended prohibiting the operation of hot food trucks based on the potential health risks associated with their operation in this, the largest geographic county in the United States. Pursuant to that recommendation, staff review of county ordinances passed over the past several decades did not reveal a time when the Board has allowed these types of food trucks to operate in the County. San Bernardino, along with Riverside, are believed to be the only counties in the state that prohibit mobile hot food truck operations.

The regulations for the operation of MFF's, including hot food trucks, in the County are outlined in County Code (Title 3, Division 3, Chapter 4 - Food Protection). County Code § 33.0409(f) prohibits the operation of vehicles upon which food is prepared for sale (i.e., hot food trucks) except for coffee/cappuccino facilities [as provided in § 33.0409(g)] or on a temporary basis as described below (emphasis added):

§33.0409 Nonpermanent Food Facilities

(f) *Itinerants (Mobiles and Temporaries) Generally Prohibited.*

Food processing or preparation is prohibited in any vehicle, conveyance or other mobile itinerant, temporary or portable food unit except as provided in Subdivision (g) herein, and except at facilities approved by DEHS and only at temporary special events, fairs, community celebrations, outdoor festivals, rodeos, circuses, carnivals, official off-road races and other similar official events of short duration under special permit of this jurisdiction.

It is important to note that this section of the County Code was last amended in 2002 and, since that time, updates to the Cal Code have eliminated use of the term "itinerants" (replaced by the terms "mobile food facilities" and "temporary food facilities"). In addition, Cal Code now requires that events involving "temporary food facilities" (fairs, community celebrations, festivals, rodeos, etc. as described above) be part of a "community event" which is defined as follows:

§ 113755 Community event means an event that is of civic, political, public, or educational nature, including state and county fairs, city festivals, circuses, and other public gathering events approved by the local enforcement agency.

In accordance with these state and local provisions, hot food trucks are allowed to operate as "temporary food facilities" at "community events" in the County. At these events, the hot food trucks are stationary and are regulated in accordance with Cal Code requirements for a "temporary food facility" rather than those for a "mobile food facility." The regulatory standards for temporary food facilities at a community event take into account the fact that, under these circumstances, food preparation takes place in a controlled environment with a responsible party (DEHS-permitted event organizer) who has received advance approval of a plan that addresses public health concerns including handwashing, sanitation, and restroom facilities. Additionally, DEHS is made aware of the type of food being prepared in advance and inspections are conducted on site at the event, while vendors are in operation, to assure the protection of public health. DEHS approved slightly more than 200 community events in 2010 and it is anticipated that an equivalent number of events will occur in 2011.

In an attempt to evaluate the relative health and safety risks associated with various types of food facilities, DEHS reviewed the frequency of critical health violations such as proper food temperatures, potable water supply, employee hygiene, and sink/sanitizer requirements,

occurring at stationary restaurants, temporary food facilities and hot food trucks during a brief sample period. These violations were documented during unannounced restaurant inspections, planned inspections of both temporary food facilities and hot food trucks operating community events. Stationary restaurants were cited for 0.42 violations per inspection; temporary food facilities were cited for 0.65 violations per inspection; hot food trucks were cited for .98 violations per inspection.

In summary, hot food trucks are currently permitted to operate in the County's cities, towns and unincorporated communities under the following conditions:

1. The hot food truck will operate at a community event as described above;
2. The hot food truck has a permit from DEHS to operate as a Temporary Food Facility; and,
3. The event sponsor has a valid Event Organizer permit from DEHS which:
 - a. Includes the host jurisdiction's approval of the community event; and
 - b. Identifies the hot food truck as an event vendor.

Options for Hot Food Truck Operations in the County

In general, three options identified relative to the County's regulation of hot food truck operations in the County are outlined below followed by detailed descriptions, impacts and summaries for each option:

1. Maintain the existing County health and safety ordinance and prohibition of hot food trucks except when operating as a temporary food facility at an approved community event.
2. Amend the existing County health and safety ordinance to establish a new category of "hot food truck events."
3. Amend the existing County health and safety ordinance to permit hot food trucks to operate throughout the County.

Option 1: Maintain Existing Ordinance

Description: Hot food trucks would continue to be permitted to operate as temporary food facilities when part of a DEHS-permitted, locally-approved community event, as described above.

Impacts: No impacts beyond those currently experienced.

Summary: This option would maintain the status quo. There would be no increase in public access to hot food trucks. The operation of hot food trucks as temporary food facilities provides ample opportunity to conduct field inspections and address any health and safety issues.

Option 2: Amend Existing Ordinance to Establish New Category of "Hot Food Truck Events"

Description: Amend the existing County health and safety ordinance to establish the category of "hot food truck events" and a system for allowing hot food trucks to congregate, subject to local (i.e., town or city) approval. Food trucks would continue to be able to operate as temporary food facilities at community events.

Impacts: The County would work with the cities and towns to develop the definition and operational framework for this new category of event. It is anticipated that the County and its cities and towns would approve hot food truck events in accordance with local land use/temporary event processes. DEHS would permit the hot food trucks for operation at these events and develop procedures for implementation of state (Cal Code) and county health and safety regulations for hot food truck operations including:

1. Fee structure and procedures for permit applications including investigation, expiration, revocation, appeal and letter grading system;
2. Equipment requirements and plan review;
3. Inspection, complaint investigation and enforcement protocols;
4. Signage requirements, display of permit, and display of letter grade; and,
5. Waste and litter requirements.

Summary: This option would allow increased public access to hot food truck events while providing ample opportunity to conduct field inspections and address any health and safety issues.

Option 3: Amend Existing Ordinance to Allow Mobile Hot Food Trucks

Description: Amend the existing County ordinance to allow mobile hot food trucks to operate countywide. This would lift the current health and safety restriction and allow for the permitted operation of hot food trucks throughout the County.

Impacts: The current countywide health and safety limitations on hot food truck operations in the County have been in place for many decades and, as a result, hot food truck operations in the cities, towns and unincorporated communities have been restricted at the county level, without the need for additional local regulation. If the existing health and safety restrictions were lifted, the County and each city/town within the County would need to consider whether and how to regulate the operation of mobile hot food trucks within their jurisdictions.

DEHS would develop procedures for implementation of state (Cal Code) and county health and safety regulations for hot food truck operations including:

1. Fee structure and procedures for permit applications including investigation, expiration, revocation, appeal and letter grading system;
2. Equipment requirements and plan review;
3. Inspection, complaint investigation and enforcement protocols;
4. Signage requirements, display of permit, and display of letter grade; and,
5. Waste and litter requirements.

In order to gain a sense of the impacts that lifting of the County's historic health and safety prohibition on mobile hot food trucks might have, staff contacted several counties and cities within the state, all of which have had years of experience with mobile hot food truck operations. We learned that, in addition to the health and safety protocols outlined above, there are several key aspects of hot food truck operations that the County and its cities and towns would likely want to consider including the following:

1. General operational parameters such as:
 - a. Operation on private vs. public/commercial vs. residential property
 - b. Hours of operation
 - c. Noise restrictions
 - d. Density (i.e., number of trucks per block)

2. Traffic regulations to address issues such as operation in public right-of-way vs. private property, parking and congestion.
3. Business licenses, permits and/or taxes.
4. Coordinated complaint response and enforcement of regulations for hot food truck operations (DEHS would remain responsible for investigation and resolution of health-related issues; local jurisdictions would be responsible for investigation and resolution of alleged violation of local safety regulations).

Summary: This option would allow increased public access to hot food trucks but severely limits opportunities to conduct field inspections and address any health and safety issues.

In conclusion, the State of California, through LEAs, regulates health and safety standards for retail food facilities including MFFs, such as hot food trucks. On recommendation of DEHS, the Board has enacted a local ordinance restricting hot food truck operations in the County to approved community events, where they are permitted to operate as temporary food facilities. DEHS approves approximately 200 community events per year. Hot food trucks are otherwise prohibited from operation anywhere within the County.

Options for expanded hot food truck operations include establishment of a new category of event (hot food truck event) or lifting of the current health and safety prohibition. Both of these options would require development of protocols for implementation of Cal Code and local health and safety regulations for these MFFs, as well as consultation with the cities and towns regarding operational impacts.

REVIEW BY OTHERS

This item has been reviewed by Public Health (Trudy Raymundo, Assistant Director, 387-9146) on July 18, 2011; Land Use Services (Christine Kelly, Director, 387-4431) on July 18, 2011; County Counsel (Kristina Robb, Deputy County Counsel, 387-5436; Bart Brizzee, Principal Assistant County Counsel, 387-8946) on July 19, 2011; and the County Administrative Office (Kelly Welty, 387-5426; Monique Allen, 386-8393; Lori Ciabattini, 388-0253, Administrative Analysts) on July 13, 2011.