



CITY OF SACRAMENTO

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JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

DEPARTMENT OF LAW

812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

June 13, 1980

City Council
Council Chambers
Sacramento, California 95814

CITY MANAGER'S OFFICE
RECEIVED
JUN 13 1980

RE: STREET VENDOR ORDINANCE

Honorable Members in Session:

SUMMARY

On May 29, 1980, the Law and Legislation Committee recommended approval of the attached amendments to the Street Vendor Ordinance.

BACKGROUND INFORMATION

The attached amendments to the Street Vendor Ordinance are shown in underscore and deletion and explained in the attached memoranda, dated March 6th and March 13th. With one exception, the amendments strengthen the authority of the City. The amendment which deletes the requirement that street vendors carts be located at least 300 feet from a restaurant or floral shop is necessary because of a recent California court decision.

RECOMMENDATION

The Law and Legislation Committee and our office recommend adoption of the attached Ordinance.

Very truly yours,

James P. Jackson
JAMES P. JACKSON
City Attorney

JPJ:KMF
ATTACHMENTS

RECOMMENDATION APPROVED

Walter J. Slips
APPROVED
CITY MANAGER OF CITY COUNCIL

JUN 24 1980

OFFICE OF THE
CITY CLERK

APPROVED
BY THE CITY COUNCIL

JUN 17 1980

OFFICE OF THE
CITY CLERK

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March 6, 1980

Law & Legislation Committee
City of Sacramento
City Hall
Sacramento, California

In re: STREET VENDOR ORDINANCE

Members in Session:

I propose four amendments to the Street Vendor Ordinance which the Council adopted on November 21, 1979. A copy of these proposed amendments is attached and indicated in underline and strike-out. The amendments are summarized as follows:

1. In Section 7.63, it is recommended that a sentence be added providing that a permit shall be revoked if it is not used for ninety (90) consecutive days or more. This provision is similar to the requirement for cardroom licenses. In working with Walt Thompson on the conditions to be attached to permits by the City Manager, we decided that a provision such as this was desirable to prevent a permittee from having a permit and not using it. We also realized that there was no express authority under the present ordinance for the City Manager to attach this type of condition. Thus, the ordinance amendment is proposed.

2. In Section 7.63, the provisions prohibiting the location of vendors in close proximity to existing restaurants and florists are recommended for deletion. This recommendation is based upon the recent case of People v. A La Carte Catering Company, 98 Cal. App.3d Supp. 1 (1979), which invalidated a similar provision in the Los Angeles City Ordinance. (See March 13, 1980 memo for addition explanation)

3. In Section 7.70, an amendment is proposed to make it very clear that a food or flower vendor's permit is not property, has no value, and may not be sold or mortgaged.

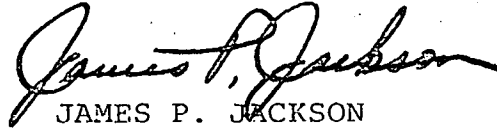
4. A provision is added to Section 7.71 making it clear that the City Council may not only cancel food or flower vendor permits, but may further restrict the food or flower vendor operation by amendment to the City Code.

Law & Legislation Committee
March 6, 1980
Page Two

Three of the above amendments give the City more authority in controlling vendor operations on the downtown public sidewalks. One of the above amendments conforms to existing law as recently determined by a California court.

I have not discussed these proposed amendments with the parties who are interested in this subject. Unless there is some objection by the committee, I would like to discuss them with the interested persons and report back to the committee at its next meeting.

Very truly yours,



JAMES P. JACKSON
City Attorney

JPJ:kn

Attachment



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812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

March 13, 1980

TO ALL INTERESTED PARTIES:

RE: Street Vendors Ordinance

Walter Thompson, Assistant to the City Manager, and I have been working on the conditions to be included by the City Manager in street vendor permits. In this process, we have identified the need for some additional amendments to the Street Vendor Ordinance. The attached letter to the Law and Legislation Committee, dated March 6, 1980, identifies all but one of the proposed amendments. We also enclose a copy of the ordinance with the proposed changes marked in underline and strike-out. One additional amendment is proposed on Page 7 of the ordinance where the word "and" would be changed to the word "or".


I would also like to elaborate on the proposed amendment to Section 7.63, relating to the location of vendors within 300 feet of existing restaurants and florist. In the recent case of People vs. Ala Carte Catering Co., 98 C.A. 3d Supp. 1 (1979), the Court decided that the ordinance of the City of Los Angeles, which prohibited street sales of food within 100 feet of a restaurant, was invalid. The Court said that the ordinance provision was arbitrary, irrational and "a naked restraint of trade". The Court agreed that a city could entirely prohibit vendors, but if the City allows such sales, the regulations have to be reasonably related to a public purpose. The City of Los Angeles had argued that the purpose of the legislation was to eliminate traffic hazards. The City also claimed that the limitation was a rational one because the street vendors were providing sustenance to stranded wayfarers and were not needed close to an established restaurant. The Court said that there was no evidence of any less traffic hazard 100 feet or more from a restaurant than there was within 100 feet of a restaurant. The Court also said that there was no explanation as to why street vendors would not provide the same life-preserving sustenance within 100 feet of a restaurant during the hours or on a day that the restaurant is closed. For these reasons the court invalidated the ordinance.

While we do not agree with all of the reasoning in the Ala Carte case, we do agree with the conclusion reached by the Court. Therefore, we have recommended that the provision of the City ordinance relating to proximity of street vendors to restaurants be deleted.

Page Two
March 13, 1980

We intend to discuss these amendments with the Law and Legislation Committee at its next meeting which will be held on Thursday, March 20, 1980, at 4:00 P.M. in the City Council chambers. You are invited to attend this meeting. If you have any questions concerning the proposed amendments, you may contact Mr. Walter Thompson, Assistant City Manager, at 449-5704, or the undersigned.

Very truly yours,


JAMES P. JACKSON
City Attorney

JPJ:KMF
ENCLOSURE

ORDINANCE AMENDING SECTION 7.63, 7.70 AND
SECTION 7.71 OF THE SACRAMENTO CITY CODE
RELATING TO STREET VENDORS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO AS FOLLOWS:

SECTION 1.

Section 7.63, 7.70 and 7.71 of the Sacramento City Code are hereby amended as follows:

Article IV. Street and Sidewalk Vending

Division 1. General

Sec. 7.63. Same - Investigation and Decision.

Applications for a food or flower vendor's permit shall be investigated by the City Manager. The investigation shall take into consideration the character of the applicant and any law enforcement problems which the issuance of the permit might tend to create. In addition to his investigation, the City Manager shall also refer every application to the Planning Director for a written report concerning the compatibility of the proposed use of the premises with existing zoning and neighborhood land uses. The City Manager may also consider such other sources of information as are available to him and may require the applicant to be fingerprinted.

The City Manager may deny an application for a food or flower vendor's permit if the applicant has been convicted of one of the type of category of crimes enumerated in subsection 2 of Section 7.61, or if in his opinion, the business is to be located or operated under circumstances where it would tend to cause a law enforcement problem or create a public nuisance or where the granting of the permit would not be compatible with the public health, safety or welfare or would not comply with the provisions of this chapter or would be contrary to the public interest. The City Manager shall deny the permit if the application does not meet the number, location, and other requirements of this chapter.

In granting a permit under this chapter, the City Manager may impose such reasonable terms and conditions upon the operation of the business as the Manager deems necessary or desirable under the circumstances to protect the health, safety and well-being of the public. The City Manager may require all food and flowers to be located on the vendor's cart and may prohibit the location of any food or flowers on sidewalks. If, for a period of ninety (90) consecutive days or more, a person with a vendor's permit

BY THE CITY COUNCIL

JUN 24 1980

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fails to maintain or operate their vendor's business, then the permit shall be deemed abandoned and shall be revoked. The City Manager shall specify the location and the amount of area to be allowed for the business. The City Manager shall review and approve the cart design of the business. The City Manager, in determining the location of the vendor's business in the Central Business District, shall consider, among other things, the location of other street vendors, the proximity of other businesses located nearby in buildings, and the effect of a vendor's location upon pedestrian and vehicular traffic flow. The City Manager shall have discretion to determine which application shall be approved and where on a block the vendor shall be located, after taking into account the standards imposed by this article. The vendor's permit shall be attached to and prominently displayed on the vendor's cart.

Prior to the issuance of any permit under this article, the applicant shall pay to the City Revenue and Collections Officer any business license fee and the applicable Downtown Business Improvement Area tax required by Chapter 23 of this Code. Decisions of the City Manager relating to the granting or denial of an application for a vendor's permit shall be rendered in writing not less than sixty (60) days after the date of application. Copies of decisions shall be mailed to the applicants not later than five (5) days after the date of decision and shall be mailed to the address of any business, conducted on the street level, which is located within one hundred (100) feet of the site of the vendor's permit.

Sec. 7.70 Transfer of Permit.

A food or flower vendor's permit is not property and shall have no value. Such permit may not be sold, leased, assigned, hypothecated or transferred in any manner to another person, firm, partnership, or corporation, including new owners in a corporation or partnership. A permit shall not be transferred to a new location without obtaining a new food or flower vendor's permit from the City Manager. An application to transfer a permit to a new owner or new location shall be made to the City Manager and shall be acted upon and considered in the same manner as an application for an original permit, provided, however, if the application does not involve a change of location, the written report of the Planning Director need not be required by the City Manager.

Sec. 7.71 No Vested Right to Sell.

There shall be no vested right to sell food, flowers, or any goods on the streets, sidewalks, or alleys in the City. The Council

reserves the right to cancel any permit issued hereunder or prohibit or further restrict the sale of food, flowers or any goods at any location at any time by amendment of the City Code.

PASSED FOR PUBLICATION:

ENACTED:

EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

Sec. 7.63. Same - Investigation and Decision.

Applications for a food or flower vendor's permit shall be investigated by the City Manager. The investigation shall take into consideration the character of the applicant and any law enforcement problems which the issuance of the permit might tend to create. In addition to his investigation, the City Manager shall also refer every application to the Planning Director for a written report concerning the compatibility of the proposed use of the premises with existing zoning and neighborhood land uses. The City Manager may also consider such other sources of information as are available to him and may require the applicant to be fingerprinted.

The City Manager may deny an application for a food or flower vendor's permit if the applicant has been convicted of one of the type of category of crimes enumerated in subsection 2 of Section 7.61, or if in his opinion, the business is to be located or operated under circumstances where it would tend to cause a law enforcement problem or create a public nuisance or where the granting of the permit would not be compatible with the public health, safety or welfare or would not comply with the provisions of this chapter or would be contrary to the public interest. The City Manager shall deny the permit if the application does not meet the number, location, and other requirements of this chapter.

In granting a permit under this chapter, the City Manager may impose such reasonable terms and conditions upon the operation of the business as the Manager deems necessary or desirable under the circumstances to protect the health, safety and well-being of the public. The City Manager may require all food and flowers to be located on the vendor's cart and may prohibit the location of any food or flowers on sidewalks. If, for a period of ninety (90) consecutive days or more, a person with a vendor's permit fails to maintain or operate their vendor's business, then the permit shall be deemed abandoned and shall be revoked. The City Manager shall specify the location and the amount of area to be allowed for the business. The City Manager shall review and approve the cart design of the business. The City Manager, in determining the location of the vendor's business in the Central Business District, shall consider, among other things, the location of other street vendors, the proximity of similar types of other businesses located nearby in buildings, and the effect of a vendor's location upon pedestrian and vehicular traffic flow. ~~No permit shall be granted to a food vendor for a location which, at the time of issuance of the permit, is within 300 feet of the front door of a restaurant which operates on the first floor in a building and which sells the same or similar type food as that sold by the food vendor. -- No permit shall be granted to a flower vendor for a location which, at the time of issuance of the permit, is within 300 feet of the front door of a florist which operates on the first floor in a building and which sells the same or similar~~

~~type-flowers-as-that-sold-by-the-flower-vendor.~~ The City Manager shall have discretion to determine which application shall be approved and where on a block the vendor shall be located, after taking into account the standards imposed by this article. The vendor's permit shall be attached to and prominently displayed on the vendor's cart.

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Sec. 7.71. No Vested Right to Sell.

There shall be no vested right to sell food, flowers, or any goods on the streets, sidewalks, or alleys in the City. The Council reserves the right to cancel any permit issued hereunder or prohibit or further restrict the sale of food, flowers, or any goods at any location at any time by amendment of the City Code.