

ORDINANCE NUMBER O- 20229 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 02 2013

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE, BY AMENDING CHAPTER 4, ARTICLE 1, DIVISION 0, BY AMENDING SECTIONS 41.01.1, 41.01.2, 41.03 AND REPEALING SECTIONS 41.01.3, 41.01.15, 41.01.17, 41.01.18, 41.03.1, 41.08.1, 41.08.2, 41.08.03, 41.09, 41.09.1, 41.11, 41.12, 41.13, 41.16, 41.16.1, 41.34, 41.37; AND BY AMENDING CHAPTER 4, ARTICLE 1, DIVISION 7, BY AMENDING SECTION 41.0702, AND ADDING SECTION 41.0704; AND BY AMENDING CHAPTER 4, ARTICLE 2, BY REPEALING DIVISION 1 WITH THE EXCEPTION OF SECTIONS 42.0101, 42.0102, 42.0170, 42.0171, 42.0172, AND 42.0173 AND BY AMENDING THE TITLE OF DIVISION 1 TO READ AS "RETAIL FOOD FACILITIES AND HANDLERS" AND AMENDING SECTIONS 42.0101 AND 42.0102 BY AMENDING CHAPTER 4 BY RENUMBERING SECTIONS 42.0170 TO 44.0226, 42.0171 TO 44.0227, 42.0172 TO 44.0228 AND BY RENUMBERING AND AMENDING SECTION 42.0173 TO 44.0228; BY AMENDING CHAPTER 4, ARTICLE 2, BY REPEALING DIVISION 11; AND BY AMENDING CHAPTER 5, ARTICLE 4, DIVISION 1, BY AMENDING SECTION 54.0122; ALL RELATING TO RETAIL FOOD FACILITIES AND FOOD HANDLING.

WHEREAS, the County of San Diego, through its Department of Environmental Health is the enforcement agency for the City of San Diego for various "health regulated businesses," including retail food facilities as provided in Chapter 4 of the San Diego Municipal Code; and

WHEREAS, the County currently implements the restaurant "ABC" letter grading system within the City; and

WHEREAS, on July 1, 2012, the County adopted a grading system for mobile food vendors to aid the County in providing enforcement of regulations applicable to retail food facilities; and

WHEREAS, extending the widely recognized letter grading system to mobile food facilities that prepare food will provide consumers with more information about the overall operating condition of the mobile food facility and help to better distinguish them from unpermitted food vendors; and

WHEREAS, the City's existing regulations affecting retail food facilities and handlers are largely preempted by the California Retail Food Code, Health & Safety Code sections 113700, et seq., which provide comprehensive regulations for retail food facilities and handling; and

WHEREAS, the City Council desires to clarify the provisions of the Municipal Code relating to food facilities and handling for continued enforcement by the County and City; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 4, Article 1, Division 0 of the San Diego Municipal Code is amended by repealing sections 41.01.3, 41.01.15, 41.01.17, 41.01.18, 41.03.1, 41.08.1, 41.08.2, 41.08.03, 41.09, 41.09.1, 41.11, 41.12, 41.13, 41.16, 41.16.1, 41.34, 41.37, and amending sections 41.01.1, 41.01.2, 41.03 to read as follows:

**§41.01.1 Health Department or Department of Public Health**

The term HEALTH DEPARTMENT or DEPARTMENT of PUBLIC HEALTH means the San Diego County Department of Environmental Health when the latter is enforcing the terms of this Chapter for the City of San Diego.

**§41.01.2 Health Officer or Director**

The term HEALTH OFFICER or DIRECTOR means the Director of the

San Diego County Department of Environmental Health and any officer or employee of the Health Department.

**§41.03 Health Permits and Grade Cards Required**

No person shall conduct, manage or operate a Health Regulated Business without a current health permit issued by the San Diego County Department of Environmental Health. A separate health permit shall be required for each establishment. Health permits shall not be transferable from one person to another or from one location to another.

Section 2. That Chapter 4, Article 1, Division 7 of the San Diego Municipal Code is amended by amending section 41.0702 and adding section 41.0704 to read as follows:

**§41.0702 Health Permit Fees — General — Annual Inspection Fee**

Except as otherwise specifically provided in this chapter, every person applying for a permit under the provisions of this chapter shall at the time of making application for such permit pay a fee, the exact amount of which shall be determined by the County of San Diego and kept on record by the County Department of Environmental Health and on file in the City Clerk's Composite Rate Book. In any case where the applicant has failed to file the application and obtain the required permit, license or registration as determined by the County of San Diego, there shall be added to and collected with the required fee a penalty. The penalty shall be determined by the County of San Diego and kept on record by the County Department of Health Services and on file in the City Clerk's Composite Rate Book. The imposition or payment of the penalty imposed by this section shall not prohibit the imposition of any other penalty prescribed by this

and applicable City regulations for health regulated businesses to protect the public health and safety in the City and to appoint the San Diego County Department of Environmental Health as the local enforcement authority on State and County regulations for retail food facilities and their employees in the City.

**§42.0102 County Code of Regulations Adopted**

The provisions of the San Diego County Code of Regulatory Ordinances concerning permanent and mobile food facilities, at Title 6, Division 1, of the County Code, are incorporated into this Code by this reference.

Section 5. That Chapter 4, of the San Diego Municipal Codes is amended by renumbering Sections 42.0170 to 44.0226, 42.0171 to 44.0227, 42.0172 to 44.0228 and renumbering and amending Section 42.0173 to 44.0229 to read as follows:

§44.0226 [No change in text.]

§44.0227 [No change in text.]

§44.0228 [No change in text.]

**§44.0229 Plastic Food Containers— Penalty**

In addition to any other applicable civil or criminal penalty, any person convicted of a violation of section 44.0227 is guilty of an infraction, which is punishable by a fine not to exceed \$50.00 for the first violation, \$100.00 for the second violation within one (1) year, and \$250.00 for each additional violation within one (1) year. Each incident in violation of section 44.0227 shall constitute a separate violation.

Section 6. That Chapter 4, Article 2, Division 11 of the San Diego Municipal Code is repealed.

Section 7. That Chapter 5, Article 4, Division 1 of the San Diego Municipal Code is amended by amending section 54.0122 to read as follows:

**§54.0122 Prohibitions and Regulations Applicable to the Sale or Distribution of Foods, Beverages, Merchandise or Services from Vehicles and Mobile Food Units**

- (a) Purpose and Intent. The City Council hereby finds and declares that the unrestricted sale or distribution or the offering for sale or distribution of food, beverages, merchandise or services from vehicles or mobile food units within or upon public streets, sidewalks and rights of way, public property or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians thereby exposed to hazards from other vehicular traffic in the vicinity. The City Council further finds that it is in the interest of the health, safety and welfare of the community that sales of products from mobile food units be limited to food items subject to regulation under the California Retail Food Code. The City Council further finds that the unauthorized use of public property for private commercial activity constitutes a misuse of public property and tax money and that similar activity on private property when not in conformity with health, safety, zoning and land use regulation is contrary to the public welfare.
- (b) – (g) [No change in text.]
- (h) Mobile food unit operations are limited to the sale of food items regulated under the California Retail Food Code. The sale or distribution of any other items is prohibited.


(i) In addition to enforcing applicable federal, state and local laws, the City intends to strictly enforce any violations of the California Penal Code regarding the sale, distribution, or display of BB devices and Imitation Firearms. Violations of mobile food unit sections may be pursued as both a regulatory and a criminal violation.

(j) [No change in text.]

Section 8. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 9. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Prescilla Dugard  
Deputy City Attorney

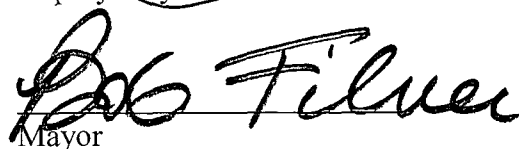
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11/13/2012  
Or.Dept: City Attorney  
Doc. No.: 471911

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of DEC 17 2012.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 1/2/13  
(date)

  
Mayor

Vetoed: \_\_\_\_\_  
(date)

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Mayor