



H-11

**STAFF REPORT**

MEETING  
DATE: December 13, 2011  
TO: City Council  
FROM: Joseph M. Kreins, Chief of Police  
James Berg, Captain, Operations Division  
PRESENTER: James Berg, Captain, Operations Division  
SUBJECT: **MOBILE FOOD VENDING MUNICIPAL ORDINANCE**

75 Rowland Way #200  
Novato, CA 94945-3232  
(415) 899-8900  
FAX (415) 899-8213  
[www.novato.org](http://www.novato.org)

**REQUEST**

Consider adopting Municipal Ordinance establishing mobile food vending regulations, which includes the identification of permissible locations and times of mobile food vending near school property.

**RECOMMENDATION**

Adopt new ordinance and amend existing ordinances.

**DISCUSSION**

On May 10, 2011, staff brought to City Council a report discussing the increasing concerns over the proliferation of mobile food vending trucks parked outside of Novato Unified School District (NUSD) school sites before and after school and during the lunch hour at the high schools (See attached Staff Report from May 10, 2011). At the conclusion of the agenda item, Council directed City staff members to work with representatives of NUSD in an interest-based fashion to research the issues and develop a response that would be satisfactory to the City and the NUSD.

Over the course of several months, a number of meetings were held with various representatives from City staff and NUSD. Discussions included, but were not limited to, the "history" of the problem within the community, identification of the various stakeholders, a review of the existing Novato municipal ordinance, explanations of the current lunch hour schedule at the two high schools, examples of specific safety issues related to mobile vending trucks, nutritional goals of the school district, various potential remedies, and GIS mapping of various distances as

Novato City Council  
Agenda Staff Report  
Date: \_\_\_\_\_  
File No. \_\_\_\_\_

it relates to school property, etc. A number of the committee members went to the school sites to personally observe the issues created by the presence of the mobile food vending trucks.

In addition to these meetings, outreach and research was done through the California Police Chiefs Association to identify other communities in California that had existing municipal ordinances regulating mobile vending trucks. A number of municipal ordinances from other cities were obtained and reviewed by members of the committee. Additionally, the International Association of Ice Cream Distributors and Vendors (IAICDV) was contacted to determine other "Best Practices" regarding mobile vending trucks that are being practiced throughout the United States.

The committee also reviewed the current City of Novato municipal ordinance, which was adopted in November 1977, that pertains to mobile food vending trucks. It states the following:

*18-7.20-Except as otherwise provided in this section, no person shall stand or park any vehicle, wagon, or pushcart from which goods, wares, services, merchandise, fruits, vegetables, or food staffs are sold, displayed, solicited or offered for sale or bartered or exchanged, or any lunch wagon or eating car or vehicle, on any portion of any street within the City, except that such vehicles, wagons, or pushcarts may stand or park only at the request of a bona fide purchaser for a period of time not to exceed 10 minutes at any one place. The provisions of this subdivision shall not apply to persons delivering such articles upon order of, or by agreement with, a customer from a store or other fixed place of business or distribution.*

To date the enforcement of this ordinance by the Police Department has been essentially non-existent. The ordinance is vague in relation to the actual time allowed with a single purchaser and the distance required to travel by the vendor before the 10 minute time limit starts over again. Additionally, this ordinance does not address the many safety issues that are created when large groups of pedestrians congregate at the vending trucks. Over time there has been an increase of mobile food vending trucks that sell their product adjacent to school property. Because of the inability to effectively enforce the existing municipal ordinance, the past strategy of the police department has been to ask for voluntarily compliance from the mobile food vendors. This has been ineffective.

The following primary interests were initially identified as critical to the City and NUSD as it relates to the mobile vending trucks and their proximity to school sites:

- 1) Safety interests
- 2) Nutrition interests
- 3) Enforcement/resource interests

Based on those interests, the following goals were identified:

- 1) Develop a solution that builds partnership and collaboration between the City of Novato and the NUSD.
- 2) Develop a solution that celebrates the collective recommendation.
- 3) Develop a solution that truly fixes the issue and doesn't create another problem or issues with other constituents.
- 4) Develop a solution that creates good will within the Community.

During the course of the meetings the safety interests of both the City and NUSD rose to the top as far as justification for taking action. The Principal and Assistant Principal at Novato High School shared their personal experiences dealing with the mobile vending trucks at their school. The following is a description of some of the safety issues at Novato High School as a result of the mobile vending truck's presence:

- Breaking up fights between students related to purchasing items from the mobile vending trucks.
- Breaking up fights between the actual mobile truck vendors as it relates to their parking positions.
- Students walking out into traffic in order to purchase items from the mobile vending trucks.
- Vehicles having to take evasive action to avoid colliding with student pedestrians.
- Vending trucks have been observed not only blocking some resident's private driveways, but on some occasions actually parking in their driveways.
- It was learned that some vendors are "paying" students for their parking spaces so that they will have premium parking spaces, which provides the vendors better and first access to the students.
- There have been many complaints from residents that their personal property and landscaping was being trampled because of the number of students gathering at the vending trucks.
- Residents have submitted photographs of students loitering on their property and littering by leaving their garbage from the snacks they purchase from the vending trucks.

Up to this time the primary focus of the discussions were the lunch time issues at the two high schools. The two middle schools have closed campuses at lunch time and it was assumed that those sites were "immune" from the problems. However, as a result of the interest based discussions, it was learned that the two middle schools were also experiencing problems both before and after school. The mobile vending trucks have been selling their products at or near the middle schools, both before and after school. This has not only led to similar safety concerns as experienced at the high schools, but also led to tardiness and delays in the children getting to school and returning home.

A review of municipal ordinances that were obtained from other communities in California revealed that many had both distance and time restrictions that regulated when mobile vending trucks could vend near school property. The distances varied from 200 feet to a maximum of 1500 feet. Additionally, some ordinances had time regulations which prohibited vending from one hour before the start of school to one after school was dismissed regardless of distance.

#### CITY ATTORNEY REVIEW

The City Attorney was also asked to review case law and existing California municipal ordinances that regulate mobile vending trucks. Additionally the question was raised by the committee if the City had the authority to entirely prohibit mobile food vending trucks. In summary, California Vehicle Code Section 22455(b) provides: "*a local authority may, by*

*ordinance or resolution, adopt additional requirements for public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon any street."*

When an earlier version of this statute was analyzed, the court held that the use of the term "regulate" did not include the authority to "prohibit." Accordingly, it appears that cities cannot prohibit any type of vending on public streets but can regulate vending for public safety reasons. Therefore the City would be incurring a significant risk of legal liability if it were to entirely prohibit some type of vending on city streets. A court could find such ordinance to be preempted by California Vehicle Codes Section 22455(b). There is nothing to prohibit or specify a specific regulatory distance, or "buffer zone", as it relates to mobile vending trucks. The critical element for the City is the need to articulate the reasons that a specific distance is necessary to combat the negative effects of vending near schools. The same type of justification would hold true should the City move forward with a time restriction in addition to a distance restriction.

#### "Buffer Zone" Analysis

During the 2010/2011 school year the staff at Novato High School, along with Chris Long, the Legislative Chairperson from IAICDV, attempted to get the mobile ice cream vendors to voluntarily honor a 500 foot vending restriction from the school property. Some of the vendors complied for a period of time until one by one they started infringing onto the 500 foot "buffer zone." Novato High School staff reported that when the trucks were even honoring the 500 foot buffer zone, the distance was so minimal that many students would make multiple trips to the trucks within their 40 minute lunch period.

Research shows that high school age pedestrians walk at an average rate of just under five (5) feet per second. In one minute a young pedestrian can walk approximately 300 feet. It now takes that student pedestrian less than two minutes to walk to one of the mobile food vending trucks that are parked 500 feet away from school property. If a 1500 foot vending restriction was enacted it would take the student pedestrian a little over 5 minutes to get to the vending truck. The actual time needed by the students to make a round trip for a 1500 foot "buffer zone" restriction would be less than 20 minutes. Since the lunch time break for the high school students is 40 minutes, both the principal/assistant principals felt that some students would continue to purchase items from a mobile food vending truck if a 1500 foot vending restriction was imposed by the City. However, it is anticipated that the creation of a 1500 foot restriction would significantly reduce the number of multiple trips made by the students.

Staff believes that a 1500 foot restriction would greatly enhance the safety of the students. There would be smaller crowds of students at the trucks, limiting the overflow into the streets and onto resident's personal property. This will result in students not "fighting" for line position and will be less incentive for the vendors to be in the area as there would be a reduction in their sales. There are some concerns raised by NUSD staff that a 1500 foot restriction will be a greater imposition on them as they will have to travel that much further from school property in order to supervise the students who choose to make the 1500 foot (one way) trip to the mobile food vending trucks. However, it is anticipated that it would require fewer NUSD staff members to monitor the students due to the decrease in students purchasing from the mobile food vending trucks as a result of the 1500 foot restriction.

As stated earlier in this staff report, the majority of these safety problems are occurring during the lunch hour at the high schools, Novato High School in particular. The principals at Sinaloa

and San Jose Middle Schools are experiencing similar problems before and after school as their campuses are closed during the lunch break. They shared with the committee that some students are delayed on their way to school in the morning and on their route home as they stop to purchase items from the vending trucks. The need for the 1500 foot restriction would need to be implemented not only during the lunch break time period, but also during the times that students are travelling both to and from their schools.

It should be noted that the 1500 foot restriction only applies to the mobile vending trucks that are using City streets or public property to vend from. In theory, a private property owner could grant permission for a mobile truck vendor to park on their private property well within any buffer zone in order to sell their product.

Mr. Long from IAICVD was re-contacted and informed of the on-going and increasing problems involving the ice cream vendors. Due to the fact that the “voluntary compliance” by the ice cream vendors was not effective, Mr. Long is now supportive of a 1500 foot vending restriction from any school property from one hour before the regular school day to one hour after the regular school day; provided, that it shall not apply on days when school is not in session nor when vending has been approved in writing by the school principal. Mr. Long has drafted a letter indicated his support for a municipal ordinance that regulates distance and time restrictions.

In addition to the IAICDV, the Novato Unified School District, along with North Marin Council of PTAs, are also supportive of a 1500 foot “buffer zone” restriction for the mobile vending trucks. A petition was circulated by a number of Novato PTA groups that gathered in excess of 500 signatures that expressed support for the 1500/2500 foot mobile food vending restriction.

As was stated in the May 10, 2011, staff report to Council, a commercial solicitor’s permit, pursuant to Novato Municipal Ordinance 14-8, is required of all mobile food vendors. This permit is issued by the police department. This permit is in addition to a Novato Business License and Marin County Health Permit. There are seven mobile food vendors who have current, valid City of Novato commercial solicitor’s permits. The adoption of this new municipal ordinance will not change the permit requirements. With the adoption of the new municipal ordinance it is recommended that Subsection 14-8.16 of section 14-8 of the Municipal Code be amended to authorize the revocation or suspension of a commercial solicitor’s permit for violation of the provisions of the new Municipal Ordinance.

Section 18-7.20 of the Municipal Code is also amended to remove the provisions of that code section as it applies to mobile food vending vehicles. The new municipal ordinance provides the necessary regulations that will allow for enforcement by the police department of violations by the mobile food vendors.

### **FISCAL IMPACT**

As this report is for discussion purposes only, there are no fiscal impacts at present.

### **ALTERNATIVES**

Retain current ordinance.

## ATTACHMENTS

1. City staff report dated May 10, 2011
2. Letter from Chris Long, Legislative Chairperson, IAICDV, dated July 12, 2011
3. Letter from North Marin PTA dated May 9, 2011
4. Proposed Ordinance



THE CITY OF  
NOVATO  
CALIFORNIA

75 Rowland Way #200  
Novato, CA 94945-3232  
(415) 899-8900  
FAX (415) 899-8213  
www.ci.novato.ca.us

**STAFF REPORT**

MEETING

DATE: May 10, 2011

TO: City Council

FROM: Michael Frank, City Manager  
Jennifer Goldfinger, Assistant to the City Manager

PRESENTER: Michael Frank, City Manager

SUBJECT: **FOOD VENDING TRUCKS NEAR SCHOOLS**

**REQUEST**

Consider directing staff to prepare background materials and recommendations on regulations regarding food vending near schools and place on a future agenda for action.

**RECOMMENDATION**

Direct staff to prepare background materials and work in an interest-based fashion with the Novato Unified School District to explore the issues and develop a recommendation on Food Vending Trucks near schools.

**DISCUSSION**

*Background*

Novato Unified School District (NUSD) officials have expressed concern over the proliferation of Food Vending Trucks (Trucks) over approximately the last four years, parked outside the high schools at lunch time and outside the middle schools and high schools at the end of the school day. The NUSD's concerns are two-fold: the undermining of the District's efforts regarding its Healthy Food Policy and the safety of its students.

Healthy Food Policy

In 2007, the NUSD began implementing a "Student Wellness Policy" which included eliminating junk food in its schools in compliance with state law (SB 12 School Nutrition Standards - food standards for all K -12 schools July 1, 2007 and SB 965 Healthy Beverages beverage standards for all K-12 schools). The NUSD provides healthy lunches on its campuses and teaches its students about healthy lifestyles. The Trucks' products directly undermine the "Student Wellness Policy" by selling low-cost, packaged snack foods which are high-fat, high-salt, high-sugar or all of the above, i.e. mainly sodas and ice-cream.

Novato City Council Agenda Staff Report Date: _____ File No. _____
---

Recently the City was also requested by Novato students participating in the Youth Leadership Institute (YLI) to review this issue. The YLI believes that the food vending trucks threaten the District's "Healthy Food Policy" and therefore the health of students.

The City Council made a statement regarding the health of the community by making one of the goals of its Strategic Plan to "Enhance Environmental Sustainability and Promote a Healthy Community." The outcome for this goal is "Healthy and fit Novatans, living and working in an environment with healthy neighborhoods and access to active recreational programs and first class community facilities." One of the Strategic Objectives of this Goal is to explore and identify local solutions to address the obesity epidemic, primarily through recreational programming. While nutritional solutions for this goal are not a stated part of the Strategic Plan, it is clear that the Council recognizes that local actions can be taken toward achieving good health for the community.

#### Student Safety

The NUSD would like to prevent the Trucks from selling their items directly outside NUSD campuses. A concern of the District is the large number of students who gather around the Trucks, which it believes become a road safety issue as well as stimulating fights among students. NUSD states that it receives complaints on this issue from residents who live near the schools. Currently this is anecdotal information as the Police Department states that it has not received any reports of illegal activity concerning the Trucks or any traffic related reports.

#### *NUSD Staff Request*

NUSD staff has stated that its preferred method of regulating Trucks would be for the City to pass an ordinance restricting Trucks from parking within 1,500 feet of the boundaries of a school property. This would be similar to a City and County of San Francisco ordinance. The City of San Rafael has a 500 foot restriction. NUSD staff state that they have made attempts to discuss issues with the vendors but have not met with any success.

#### *Current Regulations*

1. Parking Restrictions – The City has a ten minute time restriction on parking and vending which is enforced on a complaint only basis. The City does not have any distance restrictions for Food Vending Trucks.
2. Licensing and Permits – Food Vending Trucks must obtain the following and are required to have all the permits (City and County) with them at all times and available to police officers on demand:
  - a. Novato Business License – one time application fee of \$30.00, plus annual fee of \$193.75.
  - b. Novato Police Permit – annual driver/vehicle fee of \$170.00.
  - c. Marin County Health Permit and sticker – Annual fee of \$375.00 to \$721.00

Currently, there are six ice cream trucks and one catering truck with Novato Business Licenses.



*Process*

If the Council directs staff to work on this issue, staff believes that the next step is to convene an inter-agency, inter-disciplinary staff team to research the issues and develop a response that would be satisfactory to the City and the NUSD (similar to the process used for Graffiti Abatement).

*Timeline*

The team would likely require approximately two months to research the issues and develop recommendations for the Council consideration.

**FISCAL IMPACT**

As this report is for discussion purposes only, there are no fiscal impacts at present.

**ALTERNATIVES**

1. Do no further work and do not agendize a future agenda item regarding Food Vending Trucks in the City of Novato.

**ATTACHMENTS**

1. Memo from NUSD Superintendant to City, March 15, 2011
2. Letter from San Marin High School Principal to Mayor, April 7, 2011
3. Internal NUSD memo from Novato High School Assistant Principal, April 26, 2011
4. Letter from Novato Blue Ribbon Coalition for Youth to Mayor, April 5, 2011





To: Capitan Berg  
At: Novato Police Department

From: Chris Long, Legislative Chairperson  
At: International Association of Ice Cream Distributors & Vendors

Date: 7/12/2011

Total Pages: 2

Re: City of Novato

Dear Capitan Berg,

Thanks for your phone conversation a few weeks back about Ice Cream Truck vending and the City of Novato.

Ice Cream Truck vending is a vibrant and important industry across America. Many people don't realize it, but Ice Cream Truck vending is a 500 Million dollar industry and a major producer of jobs and earnings opportunities for hundreds of thousands of hardworking Americans.

From the companies that manufacturer the wood sticks, gumballs, wraps, plastic cups, paper sleeves, cookies, and peanuts, to the companies like Unilever Ice Cream (Klondike, Ben & Jerry's, Breyers, Popsicle, Good Humor), Nestle (Dreyers, Nestle, Hagen Dazs), M&M Mars Ice Cream (Snickers, Twix, Milky Way, M&M, Dove), Wonder Ice Cream, Blue Bell, Richs Ice Cream, Prairie Farms (North Star), and Wells Blue Bunny that actually manufacture the ice cream novelties that are sold off of Ice Cream Trucks, this industry is a huge source of manufacturing, clerical, and management jobs. Beyond the manufacturing, thousands of companies work upstream in the industry by transporting, warehousing, distributing, and selling these products to Ice Cream Truck vendors. Finally, there are well over 50,000 people today – like myself - who currently provide for themselves and their families by selling ice cream novelties to the public at large.

The IAICDV respects the property rights of the Novato School District and agrees that the Novato School District should have the ability to keep Ice Cream Trucks off school property, or property that is adjacent to school property, during school days and hours.

In an effort to resolve the current issue in Novato, and to provide a win-win balance between the rights of the Novato School District and the rights of the hundreds of thousands of people who depend on the Ice Cream Truck industry for a living, I respectfully present the following proposed addition to the City of Novato Ice Cream Truck vending code:

“A person shall not vend within 1,500 feet of any property used as a school from one hour before the regular school day to one hour after the regular school day; provided, this subsection shall not apply on days when school is not attended by children nor when vending on school property has been approved in writing by the school principal.”

Please let me know if you have any questions or concerns on this matter by contacting me directly at 816-931-9969 ext. 236.

Sincerely,

Chris Long  
Legislative Chairperson  
International Association of Ice Cream Distributors and Vendors





May 9, 2011

Mayor Kellner,

The North Marin Council of PTAs requests that the City of Novato create an ordinance to restrict the access of Mobile Food Vendors near our Novato public schools.

There are three main issues:

1) Nutrition: California Education Code §35182.5 (a)(3) states:

*Parents, pupils, and community members should have the opportunity to ensure, through the review of food and beverage contracts, that food and beverages sold on school campuses provide nutritious sustenance to pupils, promote good health, help pupils learn, provide energy, and model fit living for life.*

Because the trucks are selling food to students in locations immediately off-campus, we, the public, have no oversight as to the types of foods that are being offered for sale to Novato students.

NUSD Director of Nutritional Services, Miguel Villarreal, has worked diligently for the last ten years to improve the nutritional value of the food and beverages available on our school campuses. The vendor food trucks are undermining the nutritional progress that has been made. They offer high-sugar foods, such as candy bars and sodas; and they also offer high-fat foods, such as chips and ice cream. As a result, it is difficult for the students to make healthy choices about the types of food and beverages they consume when unhealthy food is so easy to access at school release time.

The nutritional issues being caused by mobile food vendors are also in conflict with the City of Novato's 2010-2013 Strategic Plan, Goal #3 desired outcome to have: "Healthy & Fit Novatans."

2) Traffic Safety: The mobile food vendors also create multiple traffic safety hazards. Traffic hazards are created by pedestrian students at the elementary schools, middle schools and high schools because they are darting out into the street between cars and they are also crossing the street in non-designated areas. Additional traffic hazards are created for the parent drivers who are picking up students.

3) Lack of Criminal Background Checks: Please also review the attached California PTA Resolution for "Background Checks of Ice Cream Truck Vendors."

In order to protect the health and safety of our school communities, the mobile food vendor trucks must be restricted from access within certain distances of our schools.



Thank you for your consideration,  
PTA... Every Child, One Voice.

**Tanya Webster, President, North Marin Council of PTAs**

**Kathleen Frey, Parliamentarian, North Marin Council of PTAs**

**Krista Peach, Executive Vice President, North Marin Council of PTAs**

**MJ Lonson, President, Novato High School PTSA**

**Tim Davidson, Auditor, North Marin Council of PTAs**

**Sue McQuinn, President, San Marin High School PTSA**

**Azella Metzger, President, Hill Middle PTA**

**Stephanie Champie, President, Marin Oaks PTSA**

**Nanci Boyd, President, Sinaloa Middle PTSA**

**Catherine Pace, President, San Jose Middle PTA**

**Cathy Rucker, Health & Safety Advocate, North Marin Council PTA**

**Holly Graves, President, Loma Verde Elementary School PTA**

**Jane White, President, San Ramon PTA**

**Cassie Alciati, President, Hamilton PTA**

**Bath Mason, President, Lynwood PTA**

**Cathe Anderson, President, Rancho PTA**

**Brad O'Brien, President, Olive PTA**

cc:

Joe Kreins, Novato Chief of Police  
Michael Frank, Novato City Manager  
Pam Conklin, Acting Superintendent, Novato Unified  
Miguel Villarreal, Director, NUSD Nutritional Services  
Tom Cooper, President, NUSD Board of Trustees  
Michele Sheehan, President, Sixteenth District PTA  
Principals, Novato Unified School District

References:

CA Education Code §35182.5  
CA PTA Resolution: "Background Checks of Ice Cream Truck Vendors"  
Novato City Council 2010-2013 Strategic Plan

## CITY COUNCIL OF THE CITY OF NOVATO

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOVATO ADDING SECTION 18-15 TO THE NOVATO MUNICIPAL CODE FOR THE ADOPTION OF MOBILE FOOD VENDING REGULATIONS AND MAKING RELATED AMENDMENTS TO THE CODE.

THE CITY COUNCIL OF THE CITY OF NOVATO DOES ORDAIN AS FOLLOWS:

SECTION 1:

Section 18-15 is hereby added to Chapter 18 of the Novato Municipal Code to read as follows:

**18-15 MOBILE FOOD VENDING.***18-15.1 Purpose and intent*

The City Council expressly finds that vehicles in which hot and/or cold food are carried for the purpose of retail sale on the public and private streets, pose traffic hazards and special dangers to the public health, safety and welfare of children and residents in the City. It is the purpose and intent of the City Council, in enacting this chapter, to provide responsible companies and persons who engage in the operation of food vending from vehicles with clear and concise regulations to prevent safety, traffic and health hazards, as well as to preserve the peace, safety and welfare of the community. The City Council further finds all of the following:

1. Mobile food vending vehicles often stop and stand within public and private roadways to conduct business transactions, which endangers the person and property of their customers, particularly in areas of heavy traffic volume or in areas where traffic is going at a moderate or high rate of speed;
2. Mobile food vending vehicles often proliferate around public and private school sites within the City, which provide both a distraction to school children and an immediate threat to their health and safety by placing them in a vulnerable position in heavily trafficked areas during regular school hours.
3. Mobile food vending vehicles often create or exacerbate heavy traffic conditions by remaining within locations near schools that are also the site of parents, guardians, and others dropping off, picking up, and transporting school children.
4. Mobile food vending vehicles often create noise and other disturbances to the quiet peace and enjoyment of residents and businesses located in neighborhoods with public and private schools during times that they do business with schoolchildren.



18-15.2 *Regulations for sales from mobile food vending vehicles.*

It is unlawful for any person to sell or offer for sale, or operate any vehicle or conduct any business for the purpose of causing or offering for sale, any goods or merchandise from any vehicle parked, stopped or standing upon any street, alley, parkway, sidewalk or other public property in the City except in accordance with all applicable requirements of this code and in compliance with all provisions of this section 18-15.

18-15.3 *Definitions.*

The following words and terms as used in this chapter shall have the following meanings:

1. "Driver" means any person who drives, operates, or is in actual physical control of a motor vehicle.
2. "Food" means any good or merchandise that is cooked, made, manufactured, bottled, grown, preserved, or prepared for the purpose of being eaten or imbibed.
3. "Mobile food vending vehicle" means a motor vehicle, pushcart, trailer, or wagon or other portable food service unit, engaged in the curbside vending or sale of food as defined above, including but not limited to frozen or refrigerated desserts, confections, or novelties commonly known as ice cream, or prepackaged candies, snack foods, donuts, or soft drinks.
4. "Operator" means any person or entity owning, operating or otherwise controlling any business involving the vending of goods or merchandise from a vehicle.
5. "Roadway" means that portion of the right-of-way that constitutes the vehicular way intended for use by motor vehicles to travel upon and/or park.
6. "Regular school days" means those days that a public or private school is in session.
7. "School" means all public and private schools in which instruction is given through grade 12 or in any one or more such grades.
8. "Vend" or "vending" means the sale or offering for sale of any goods or merchandise to the public from a vehicle.
9. "Vendor" means any person who engages in the act of vending (as defined above) from a vehicle or who drives or otherwise operates any such vehicle for the purpose of vending there from.

#### 18-15.4 *Permits required*

- a. No person shall own, control, manage, lease, or contract with other persons for the operation of a mobile food vending vehicle in the City without having been issued a valid and unexpired commercial solicitation permit under section 14-8 of this code, in addition to any other license or permit required under any other chapter of this code, or other provisions of law including the state and county, for each and every mobile food vending vehicle.
- b. No person shall drive, operate, vend and/or prepare food from any vehicle defined as a mobile food vending vehicle in the City without having been issued a valid and unexpired commercial solicitation permit under section 14-8 of this code.

#### 18.-15.5 *Mobile Food Vendor Regulations*

- a. Each operator shall have a commercial solicitation permit in his/her/its possession at all times while engaged in the operation of and/or the actual vending from a mobile food vending vehicle. Each operator shall immediately surrender to the Chief of Police or his/her designee any such commercial solicitation permit upon the suspension, revocation or expiration of such permit or upon leaving employment as an operator.
- b. In addition to the commercial solicitation permit required in subsection a of this section, each person who drives a mobile food vending vehicle that meets the definition of a motor vehicle contained within the California Vehicle Code shall have in his/her possession a current valid California driver's license, and proof of financial responsibility, which he/she shall make available for inspection by law enforcement officers upon request.

#### 18-15.6 *Mobile Food Vending Vehicle Regulations*

All mobile food vending vehicles shall be equipped as follows:

- a. Each mobile food vending vehicle shall have a current, valid County of Marin health inspection sticker affixed to the lower right side of the windshield;
- b. With refuse containers large enough to contain all refuse generated by the operation of such vehicle and the operator of the mobile food vending vehicle, and to carry away all refuse generated by such operation within a twenty-five foot radius of the vehicle's location during vending operations;
- c. Any mobile food vending vehicle that meets the definition of a motor vehicle contained within the California Vehicle Code, shall have warning flashers that are activated immediately upon the vehicle stopping to vend and that are turned off as soon as the vehicle begins to move after vending;
- d. No additional lighting other than that required by the California Vehicle Code may be installed or operated on a mobile food vending vehicle;

- e. A back-up alarm audible for a distance of at least 100 feet;
- f. A convex mirror mounted so that the occupant of the driver's seat can see the area in front of the vehicle which is obscured by the vehicle's hood;
- g. There shall be conspicuously displayed on both the right and left side of the mobile food vending vehicle lettering permanently affixed showing the name of the company and/or operator of the food vending vehicle and the business address and telephone number thereof. The lettering for the name of the company or the operator shall not be less than four inches in height and shall be in contrast to the color of the background upon which the lettering is placed. The lettering for business address and telephone number of the company or the operator shall not be less than one inch in height and shall also be in contrast to the color of the background upon which the lettering is placed.

*18-15.7. Prohibited conduct.*

- a. No person shall vend from a mobile food vending vehicle which is stopped, parked or standing on any public street, alley or highway:
  - 1. When the posted speed limit on the public street, alley or highway is greater than thirty five (35) miles per hour;
  - 2. When the prospective customer is located in that portion of the street, alley or highway which is open to vehicular traffic;
  - 3. When the mobile food vending vehicle is parked in violation of any other provisions of this code or the California Vehicle Code;
  - 4. When the mobile food vending vehicle is within 1500 feet of the nearest property line of any public or private school between the hours of 7:30 am and 4:00 p.m. on regular school days;
  - 5. Between the hours of 9:00 pm and 7:30 am;
  - 6. When the mobile food vending vehicle is parked within seventy-five (75) feet of the nearest point where any two or more intersecting public streets or roadways meet;
  - 7. When the mobile food vending vehicle is within two hundred feet of another mobile food vending vehicle which has already stopped to vend;
  - 8. No person shall vend to any person standing on the left side of the mobile food vending vehicle while it is stopped in the roadway;
  - 9. No person shall back up a mobile food vending vehicle to make or attempt to make a sale;

10. The operator of a mobile food vending vehicle shall not permit any unauthorized person to ride in or on the vehicle. Persons authorized to ride in or on the vehicle shall be only those operators holding a commercial solicitation permit or vendors who are officers or lawfully employed by a commercial solicitation permit holder;

11. No minor under the age of 16 (sixteen) shall ride in or on a mobile food vending vehicle while such vehicle is engaged, or about to be engaged, in the operation of vending;

12. No person shall dispense any item other than food from a mobile food vending vehicle.

#### 18-15.8 *Enforcement and Penalties*

a. If an operator or vendor of a mobile food vending vehicle is found to be in violation of this ordinance, the responding peace officer may issue a Notice of Violation.

b. Any violation of this ordinance shall be an offense punishable as a misdemeanor, subject to a fine not to exceed \$1000.00 per violation, except that the enforcing authority may exercise its discretion to apply the provisions of section 1-5 of this code and prosecute the offense as an infraction, punishable as set forth by section 1-5.

#### 18-15.9 *Revocation of permit.*

A) Any commercial solicitation permit for a mobile food vending operator or business may be suspended or revoked by the Chief of Police, or his/her designee, for any of the following reasons:

1. Any of the grounds for revocation or suspension specified by section 14-8 of this code.
2. Convictions of any operator or vendor of a mobile food vending business for two or more violations of this section, which offenses have occurred within a 12-month period.

Suspension and revocation procedures set forth by section 14-8 shall be applied to any suspension or revocation of a commercial solicitation permit for a mobile food vending operator or business.

#### 18-15.10 *Vending on Private Property*

It is unlawful for a mobile food vending vehicle to vend on private property unless:

- 1) It is in compliance with the Zoning Chapter (Chapter XIX) and all other applicable provisions of this Code; and

2) The operator or vendor of the mobile food vending vehicle has in his/her possession written consent signed by the owner or the owner's authorized agent that allows the vehicle to vend on the property. The operator or vendor of a mobile food vending vehicle on private property shall have possession of the written consent required by this section at all times that the vehicle is vending on the property and shall produce written consent immediately upon request of a police or code enforcement officer, or any other person authorized to investigate a violation of this code.

SECTION 2:

Section 18-7.20 of the Municipal Code is amended to read as follows:

*18-7.20 Unlawful Parking: Peddlers, Vendors.*

a. Except as otherwise provided in this subsection, no person shall stand or park any vehicle, wagon, or pushcart from which goods, wares, services, merchandise, fruits, vegetables, or food stuffs are sold, displayed, solicited or offered for sale or bartered or exchanged, or any lunch wagon or eating car or vehicle, on any portion of any street within the City, except that such vehicles, wagons, or pushcarts may stand or park only at the request of a bona fide purchaser for a period of not to exceed 10 minutes at any one place. The provisions of this subsection shall not apply to persons delivering such articles upon order of, or by agreement with, a customer from a store or other fixed place of business of distribution.

b. Nothing in this subsection 18-7.20 shall apply to a mobile food vending vehicle as defined by section 18-15 of this code.

SECTION 3:

Subsection 14-8.16 of section 14-8 of the Municipal Code is amended to read as follows:

*14-8.16 Permit Revocation or Suspension and Appeal Thereof.*

a. A commercial solicitation permit may be revoked or suspended, by the Chief of Police for any of the following reasons:

1. Information contained in the application or supplemental information requested from the applicant is false in any material detail.

2. The applicant has failed to notify the Chief of Police of a change in facts subsequent to filing of the application as required in subsection 14-8.4b of this code.

3. The permittee is engaging in commercial solicitation at residential dwellings and has been convicted of any of the offenses specified in subsection 13-8.6a.4 of this code.

4. The permittee is a minor under 18 years of age and is not in possession of a valid work permit as specified in subsection 14-8.4a.16 of this code.

5. Any of the grounds for revocation or suspension of a permit for a mobile food vending operator or business provided under section 18-15 of this code.

b. Notice of the permit revocation or suspension stating the grounds therefor shall be personally served or served by mail on the permittee. Service by mail shall be deemed complete upon posting in the United States mail. The applicant may appeal a permit suspension or revocation by filing a notice of appeal with the City Clerk within 10 days of service by the Chief of Police of the permit revocation or suspension. If an appeal is timely filed, the City Council shall hold a hearing at its next regular meeting. The appeal must be filed no later than noon, the week preceding the next regular meeting to be placed on that meeting's agenda. The City Council may affirm, modify or overrule the decision of the Chief of Police.

#### SECTION 4: Severability:

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional on their face or as applied.

#### SECTION 5: Publication and Effective Date:

This ordinance shall be published in accordance with applicable provisions of law, by either:

publishing the entire ordinance once in the *Novato Advance*, a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption, or

publishing the title or appropriate summary in the *Novato Advance* at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance, and

This ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

\* \* \* \* \*

THE FOREGOING ORDINANCE was first read at a regular meeting of the Novato City Council on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and was passed and adopted at a regular meeting of the Novato City Council on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

AYES: Councilmembers

NOES: Councilmembers

ABSTAIN: Councilmembers

ABSENT: Councilmembers

\_\_\_\_\_  
Mayor of the City of Novato

Attest:

\_\_\_\_\_  
City Clerk of the City of Novato

Approved as to form:

\_\_\_\_\_  
City Attorney of the City of Novato