TO: PLANNING COMMISSION
FROM: Harry Freitas
DATE: November 20, 2015

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING ORDINANCE OR ZONING CODE) TO AMEND: SECTION 20.30.100 OF CHAPTER 20.30 (RESIDENTIAL ZONING DISTRICTS) TO EXPAND THE NUMBER OF HOURS AND RANGE OF SITES WITH PUBLIC/QUASI-PUBLIC USES ON WHICH OUTDOOR VENDING OF FRESH FRUITS AND VEGETABLES MAY BE ALLOWED AS A PERMITTED USE (WITHOUT AN ADMINISTRATIVE PERMIT); AND SECTIONS 20.80.810 AND 20.80.820 OF CHAPTER 20.80 (SPECIFIC USE REGULATIONS, OUTDOOR VENDING FACILITIES) TO REDUCE THE RESTRICTIONS ON OUTDOOR VENDING OF FRESH FRUITS AND VEGETABLES AND OTHER PRODUCTS AS A PERMITTED USE (WITHOUT AN ADMINISTRATIVE PERMIT); AND TO MAKE OTHER TECHNICAL, FORMATTING OR OTHER NON-SUBSTANTIVE CHANGES WITHIN TITLE 20.

RECOMMENDATION

Recommend that the City Council adopt an Ordinance of the City of San José amending the following Sections of Title 20 of the San José Municipal Code (the Zoning Ordinance or Zoning Code):

- Section 20.30.100 of Chapter 20.30 (Residential Zoning Districts) – to allow Outdoor Vending of Fresh Fruits and Vegetables on publicly accessible sites that contain government operations including but not limited to United States Post Offices or State of California Department of Motor Vehicles offices in Residential Zoning Districts, and to expand the number of hours to a total of eight hours per day that outdoor vending of fresh fruits and vegetables may be allowed as a Permitted Use (without an Administrative Permit);

- Section 20.80.810 of Part 10 of Chapter 20.80 (Specific Use Regulations, Outdoor Vending Facilities) – to allow Outdoor Vending of a variety of products in conformance with specific regulations for up to a total of four hours rather than the currently allowed period of two hours in any twenty-four-hour period as a Permitted Use (without an Administrative Permit); and
• Section 20.80.820 of Part 10 of Chapter 20.80 (Specific Use Regulations, Outdoor Vending Facilities) – to reduce the minimum distance for separation between an Outdoor Vending Facility and an exclusively residentially-used lot from 100 feet to 50 feet.

All these proposed amendments are intended to further implement the Design for a Healthful Community Major Strategy, the Vibrant Neighborhoods Goals and Policies, the Economic Development Goals and Policies, and the Land Use Goals and Policies set forth within the Envision San José 2040 General Plan (General Plan) and to make other technical, formatting or other non-substantive changes within those sections of Title 20.

OUTCOME

Approval of the recommended Code amendments will: 1) expand the opportunities for outdoor vending of fresh fruits and vegetables in residential and nonresidential zoning districts as a Permitted use without the requirement to obtain an Administrative Permit for this use if the use is conducted in compliance with certain requirements; and 2) increase the maximum number of daily hours of operation for outdoor vending of products other than fresh fruit and vegetables as a Permitted Use, if the use is conducted in compliance with certain requirements.

BACKGROUND

In February 2012, the City Council listed the streamlining of mobile vending regulations to facilitate the vending of fresh fruits and vegetables as a “top 10” priority for ordinance amendments to the San José Municipal Code. Additionally, the Envision San José 2040 General Plan contains implementation actions to streamline Planning processes for economic development and access to healthful food. The City Council has prioritized amending the San José Municipal Code to facilitate these process improvements.

Following this direction, staff previously prepared several permit-streamlining ordinances that were approved by the City Council between 2012 and 2013 to facilitate outdoor vending of fresh fruits and vegetables in farmers’ markets and in stand-alone Outdoor Vending Facilities.

Changes to the Zoning Code that became effective July 5, 2013, amended and added the following provisions to facilitate outdoor vending:

• **Allow Outdoor Vending of Fresh Fruits and Vegetables on School, Library, Community Center, and Religious Assembly Sites in Residential Zoning Districts**

  Previously, the Zoning Code did not distinguish between outdoor vending of fresh fruits and vegetables and outdoor vending of other products. All types of outdoor vending had required Planning permits, either an Administrative Permit in Commercial and Industrial Zoning Districts (issued by the Planning Director without a public hearing) or a Special Use Permit in Downtown Zoning Districts (issued by the Planning Director after a public hearing if specific findings are made). No outdoor vending was allowed in Residential Zoning Districts, and an Outdoor Vending Facility had to be at least 150 feet away from any residence.
The Zoning Code amendments adopted by Council in 2013 allow as a Permitted Use (with no Administrative or Special Use Permit required for the use) outdoor vending only of fresh fruits and vegetables between 7:00 a.m. and 9:00 p.m. for up to two hours a day per vendor and four hours a day per lot, on privately-owned parcels that are used primarily for schools, libraries, community centers, or religious assembly uses in Residential Zoning Districts. The intent was to ease access to healthful produce near where people live, work, and play, and to support micro-enterprises by simplifying and reducing Zoning Code regulations, to allow the sale of fresh fruits and vegetables as close as 100 feet to residentially-used parcels. To be a Permitted Use, the vending activity must be conducted in compliance with certain operational and siting requirements that are applicable to outdoor vending generally in other zoning districts.

- **Allow Outdoor Vending of Fresh Fruits and Vegetables in Commercial, Industrial, Downtown, and Pedestrian Oriented Zoning Districts**
  The Zoning Code changes that were adopted in 2013 established outdoor vending of fresh fruits and vegetables as a newly enumerated and Permitted Use (no Administrative or Special Use Permit required for the use) on privately-owned or privately-operated parcels with the following provisions:
  - Operate between 7:00 a.m. and 9:00 p.m.
  - Maintain a distance of at least 100 feet between the facility and an exclusively residentially-used lot.

- **Allow outdoor vending of all types of products in conformance with specific regulations without an Administrative or Special Use Permit**
  In addition to allowing outdoor vending of fresh fruits and vegetables in non-residential zoning districts between 7:00 a.m. and 9:00 p.m. on privately-owned or privately-operated lots without an Administrative or Special Use Permit through the Zoning Code changes adopted in 2013, Council expanded the duration from ½ an hour to two hours a day for outdoor vending of all types of products without an Administrative Permit if the outdoor vendors of products other than fruits and vegetables meet the regulations specified in the Zoning Code for such uses. If the vending activity occurs for more than two hours in a 24-hour period, an Administrative or Special Use Permit is required.

**ANALYSIS**
After reviewing the effectiveness of the current regulations in the Zoning Ordinance, and facilitating stakeholder engagement, Planning staff recommends additions and revisions to simplify requirements for Outdoor Vending Facilities in residential and nonresidential zoning districts. The proposed provisions are analyzed below.

- **Expand eligible sites by allowing outdoor vending of fresh fruits and vegetables on publicly-accessible sites that contain government operations including but not limited to United States Post Offices or State of California Department of Motor Vehicles offices in Residential Zoning Districts.**
  The proposed Zoning Code amendments would further expand access to healthful food by allowing as a Permitted Use outdoor vending only of fresh fruits and vegetables in the Residential Zoning District on publicly-accessible sites that contain government operations,
in addition to the currently permitted use of parcels that are used for schools, libraries, community centers, or religious assembly uses. To be a Permitted Use, the vending activity must be conducted in compliance with certain operational and siting requirements that are applicable to outdoor vending generally in other zoning districts.

• Expand eligible sites by allowing outdoor vending of fresh fruits and vegetables in Residential, Commercial, Industrial, Downtown, and Pedestrian Oriented Zoning Districts that maintain a distance of at least 50 feet between the Outdoor Vending Facility and an exclusively residentially-used lot.

All the existing provisions governing sites eligible for outdoor vending of fresh fruits and vegetables would remain, with the following amended provision:

  o Maintain a distance of at least 50 feet, rather than the current requirement of 100 feet, between the Outdoor Vending Facility used only for vending fresh fruits and vegetables and any exclusively residentially-used lot.

• Expand opportunities for mobile vending of all types of products on privately-owned or privately-operated lots by allowing outdoor vending in conformance with specific regulations as a Permitted Use with the duration expanded from two hours a day to four hours a day. Staff proposes to expand the duration from two hours a day to four hours a day for outdoor vending of all types of products as a Permitted Use if the outdoor vendors of products other than fruits and vegetables meet the regulations specified in the Zoning Code for such uses. If the outdoor vending activity were to occur for more than four hours in a 24-hour period, an Administrative or Special Use Permit would be required.

GENERAL PLAN CONSISTENCY

As proposed by Planning staff, the regulations associated with outdoor vending are consistent with the Design for a Healthful Community Major Strategy, the Vibrant Neighborhoods Goals and Policies, the Economic Development Goals and Policies, and the Land Use Goals and Policies that contribute to the City’s economic and physical health. Staff’s proposed ordinance changes are intended to help implement these goals and policies in a manner that is consistent with the General Plan.

The proposed ordinance changes would implement the following General Plan Major Strategy, Goals, Policies, and Actions:

• **Innovative Economy Policy IE-6.2** – Attract and retain a diverse mix of businesses and industries that can provide jobs for the residents of all skill and education levels to support a thriving community.

• **Major Strategy #11 – Design for a Healthful Community**

  Support the physical health of community members by promoting walking and bicycling as commute and recreational options, encouraging access to healthful foods, and supporting the provision of health care and safety services. The “Design for a Healthful Community” concept embodies a very broad range of topics, and “Design for a Healthful Community” strategies are integrated throughout the General Plan to establish a policy framework to shape and grow a city that provides for the physical health of its residents. General Plan policies support good nutrition and provide for economic opportunities that meet the needs of all residents throughout the City.
As a key factor to encourage the health of its residents, the Land Use/Transportation Diagram, and the Quality Neighborhoods and Land Use policies address improving access to healthful foods, particularly fresh produce. To this end, the General Plan also supports the development of urban agriculture, and the preservation of the existing agricultural lands adjacent to San José to increase the supply of locally-grown, healthful foods. The General Plan further supports Healthful Community regulatory land use policies, enabling the operation of farmer’s markets, urban farming activities, and promoting the availability of healthful foods while limiting access to alcohol at retail locations.

- **Vibrant Neighborhoods Goal VN-3 – Access to Healthful Foods**
  Ensure that all residents have sufficient access to healthful food, as defined by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.

- **Vibrant Neighborhoods Access to Healthful Foods Policy VN-3.5** – Encourage the location of healthful food retail, including farmers markets, in neighborhoods with high concentrations of fast food outlets compared to full-service grocery stores and fresh produce markets.

- **Vibrant Neighborhoods Access to Healthful Foods Policy VN-3.8** – Collaborate with the Santa Clara County Public Health Department and the non-profit health sector to develop an economic development strategy to attract full-service grocery stores, fresh produce markets, and other healthful food retailers to low-income and nutrition deficient neighborhoods in the city. Also work collaboratively to develop an economic development strategy to attract healthful food options near schools.

**Conclusion**

The proposed Code amendments can better facilitate outdoor vending on public and private property, and in particular outdoor vending of fresh fruits and vegetables, by simplifying Zoning Code regulations and reducing the costs of compliance with City regulations for vendors.

**PUBLIC OUTREACH/INTEREST**

Staff posted information about the proposed Code amendments on the Planning Division website and engaged the public on issues regarding potential Zoning Ordinance changes for Outdoor Vending Facilities during a Neighborhoods Commission meeting held on Wednesday, March 11, 2015, and community meetings held on May 9, June 30, and September 28, 2015 with Spanish interpretation provided. A total of more than 100 community members and vending representatives attended these meetings and commented on the effectiveness of existing and proposed regulations. Staff has also corresponded with the public by e-mail and by telephone.

**Comments by residents:**

- Support for expanding the sale of fresh fruit and vegetables from private property in areas where residents lack access to healthful food. Several residents had ideas for locations where vendors might locate, such as senior housing complexes, libraries, schools, health clinics, and churches.

- Complaints about nuisance impact of vendors, primarily in the public right-of-way.
Neighbors, primarily near Willow Glen Middle and High School, expressed concerns about mobile peddlers in the public right-of-way who were not following rules regarding peddling near schools. Much frustration with customers lining up in their front yards, trash, loitering, and with the lack of enforcement.

Some confusion expressed regarding fruit vendors who vend on street corners, and don’t have access to bathrooms. Complaints about public urination and trash. Staff explained that these rules apply to private property only and that vendors on private property are required to have access to bathrooms and handwashing facilities.

Requests from vendor representatives:

- Relax rules for fresh fruit and vegetable vendors (e.g., less distance from residences, reduced registration fees).
- Request that the Administrative Permit fees be $283 a year instead of the $850 for three years and $850 for five-year renewal. Staff responded that wouldn’t cover costs of processing the permit applications, and vendors could vend without an Administrative Permit if they followed the requirements in the Zoning Code.
- Increase vending time without a permit to 4 hours (Staff supports this change).
- Decrease buffer to 50 feet in residential zones (Staff supports this change.)
- Have the permit apply to multiple sites. Staff responded that wouldn’t cover costs of processing the permit applications, and vendors could vend without an Administrative Permit if they followed the requirements in the Zoning Code.
- Permit applications should be made available in Spanish and other languages, and not just in English. Staff responded that this is a longer-term goal and that the Council will be considering a Language Access Policy later in the year. However, in the short-term, given limited resources, Planning staff intends to focus more on educating vendors to meet the Zoning Code requirements for vending as a Permitted Use. This can be done with information provided in Spanish on the Planning Division’s website and the City Manager’s Outdoor Vending webpage. Staff has developed a bilingual slide show, which was shared at the final community meeting, handed out to attendees, and provided on the Outdoor Vending webpage.
- Provide a permanent community commercial kitchen that meets Santa Clara County health codes. Gaining access to a certified community commercial kitchen, as required by County and City codes, is an expensive and tedious process that most outdoor vendors are not able to afford in San Jose. The City of San José should launch an initiative to acquire a space that will be run as a community commercial kitchen. This commercial kitchen will run as a co-working kitchen that is certified and low-cost, which would allow food entrepreneurs to formalize and grow their business in San José. City staff responded that this is a challenge without funding, and encouraged vendors to work with charitable organizations to obtain this goal. The City Manager’s Office has met with vendor representatives and provided initial technical assistance about business planning for such a venture.
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COORDINATION

Preparation of this report and the proposed Code amendments were coordinated with the City
Attorney’s Office and the City Manager’s Office.

CEQA

Envision San José 2040 General Plan EIR, Resolution No. 76041, and Addenda thereto. Pursuant
to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity
is within the scope of the earlier approved program, and the Final Program EIR adequately
describes the activity for purposes of CEQA. The project does not involve new significant effects
beyond those analyzed in the Final Program EIR. File Nos. PP13-024 and PP15-117.

HARRY FREITAS, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact Jenny Nusbaum, Supervising Planner, Ordinance and Policy
Team at 408-535-7872.

Attachments: Draft Title 20 Amendments
Public Correspondence
Chapter 20.30
RESIDENTIAL ZONING DISTRICTS

Part 2
USES ALLOWED

20.30.100 - Allowed uses and permit requirements.

A. “Permitted” land uses are indicated by a “P” on Table 20-50.

B. “Conditional” uses are indicated by a “C” on Table 20-50. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a conditional use permit as set forth in Chapter 20.100.

C. “Special” uses are indicated by a “S” on Table 20-50. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a special use permit as set forth in Chapter 20.100.

D. Land uses not permitted are indicated by a “-” on Table 20-50. Land uses not listed on Table 20-50 are not permitted.

E. “Restricted” land uses are indicated by an “R” on Table 20-50. These uses may occur in such designated districts, as an independent use, but only upon issuance of and in full compliance with a valid and effective zoning code verification certificate as set forth in Chapter 20.100.

F. When the right column of Table 20-50 includes a reference to a section number or a footnote, the regulations cited in the section number or footnote applies to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other title of the San José Municipal Code.
<table>
<thead>
<tr>
<th>Use</th>
<th>Zoning District</th>
<th>Applicable Sections &amp; Notes</th>
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</thead>
<tbody>
<tr>
<td><strong>Residential Uses</strong></td>
<td></td>
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</tr>
<tr>
<td>One-family Dwelling</td>
<td>P P P C</td>
<td>Note 1, Section 20.30.110</td>
</tr>
<tr>
<td>Secondary Dwelling</td>
<td>P - - -</td>
<td>Section 20.30.150</td>
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<tr>
<td>Two-family Dwelling</td>
<td>- P P -</td>
<td>Note 2, Section 20.30.110</td>
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<tr>
<td>Multiple Dwelling</td>
<td>- - P -</td>
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<tr>
<td>Guesthouse</td>
<td>- - C -</td>
<td>Section 20.30.120</td>
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<tr>
<td>Mobilehome Parks</td>
<td>- - - P</td>
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<tr>
<td>Travel Trailer Parks</td>
<td>- - - C</td>
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<tr>
<td>Residential Care Facility, six or fewer persons</td>
<td>P P P P</td>
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<td>Residential Care Facility, seven or more persons</td>
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<tr>
<td>Residential Service Facility, six or fewer persons</td>
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<tr>
<td>Residential Service Facility, seven or more persons</td>
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<tr>
<td>Servants quarters attached to a One-family Dwelling or attached to a garage Structure</td>
<td>P - - -</td>
<td>Note 3</td>
</tr>
<tr>
<td>Sororities, fraternities and dormitories occupied exclusively (except for administrators thereof) by students attending college or other educational institutions</td>
<td>- - C -</td>
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<tr>
<td>Single Room Occupancy (SRO) Living Unit Facility</td>
<td>- - C -</td>
<td>Part 15, Chapter 20.80</td>
</tr>
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<td><strong>Residential Accessory Uses and Improvements</strong></td>
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<tr>
<td>Accessory Buildings and Structures</td>
<td>P P P P</td>
<td>Note 4, Section 20.80.200</td>
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<tr>
<td>Home Occupations</td>
<td>P P P P</td>
<td>Part 9, Chapter 20.80</td>
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<tr>
<td><strong>Entertainment and Recreation Related</strong></td>
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<tr>
<td>Equestrian and riding club</td>
<td>C - - -</td>
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<tr>
<td>Golf course</td>
<td>C C C -</td>
<td>Note 5</td>
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<tr>
<td>Private club or lodge</td>
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<tr>
<td>Swim and tennis club</td>
<td>C</td>
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</tbody>
</table>

**Education and Training**

| Child Day Care Center located on an existing school site or as an incident to an on-site Church/Religious Assembly use involving no building additions or changes to the site | P | P | P | P |
| Day care center | C | C | C | C |
| School - elementary and secondary (Public) | P | P | P | - |
| School - elementary and secondary (Private) | C | C | C | - |

**Public, Quasi-Public and Assembly Uses**

| Cemetery | C | C | C | C |
| Church/Religious Assembly | C | C | C | C |
| Museums, libraries, parks, playgrounds, or community centers (Privately operated) | C | C | C | C |
| Museums, libraries, parks, playgrounds, or community centers (Publicly operated) | P | P | P | P |

**Health and Veterinary Services**

| Emergency ambulance service | C | C | C | C |

**General Services**

| Certified Farmers' Market | S | S | S | S | Part 3.5, Chapter 20.80; Note 7 |
| Certified Farmers' Market - small | P | P | P | P | Part 3.5, Chapter 20.80; Note 7 |
| Neighborhood Agriculture | P | P | P | P | Part 9, Chapter 20.80 |
| Outdoor Vending - fresh fruits and vegetables | P | P | P | P | Part 10, Chapter 20.80; Notes 7 and 8 |
| Bed and Breakfast Inn | C | C | C | - |

**Transportation and Utilities**

| Community television antenna systems | C | C | C | C |
| Off-site, Alternating Use and Alternative Use Parking Arrangements | S | S | S | S | Section 20.90.200 |
| Parking Establishment, Off-street | C | C | C | C | Section 20.90.150 |
| Utility Facilities, excluding corporation yards, storage or repair yards and warehouses | C | C | C | C |
| Wireless Communication Antenna | C | C | C | C | Note 9, Sections |
| Wireless Communication Antenna, Slimline Monopole | S  | S  | S  | S  | Note 9, Sections 20.30.130, 20.30.140, 20.80.1900 and 20.80.1915 |
| Electrical Power Generation |  |
| Stand-by/Backup |  |
| Facilities that do not exceed noise or air standards | S  | S  | S  | S  | Note 6 |
| Facilities that do exceed noise or air standards | -  | -  | -  | -  |  |
| Historic Reuse |  |
| Historic Landmark Structure reuse | C  | C  | C  | C  | Part 8.5, Chapter 20.80 |

Notes:

1. Only one one-family dwelling unit per lot in the R-1, R-2, R-M and R-MH districts.
2. Only one primary dwelling structure per lot in the R-2 district.
3. Only permitted in the R-1-1 estate residential district.
4. No lot may be used solely for an accessory structure or building.
5. No driving ranges or miniature golf facilities.
6. Stand-by or backup generators that would not otherwise require some permit from the city (including but not limited to building, electrical, or mechanical), and do meet the applicable noise and air standards are not subject to the special use permit requirement.
7. Allowed on school sites, library sites, community center sites, or church/religious assembly sites only and publicly accessible sites that contain government operations including but not limited to United States Post Offices or State of California Department of Motor Vehicles offices.
8. The activity must conform with the location and operational requirements in Section 20.80.820 of Part 10, Chapter 20.80. Allowed for up to eight hours per day for each vending facility, but not to exceed four hours per day per lot.
9. Certain modifications of existing wireless facilities may be permitted with an administrative permit in accordance with Section 20.80.1915 of Chapter 20.80.
Chapter 20.80

SPECIFIC USE REGULATIONS

Part 10

OUTDOOR VENDING FACILITIES

20.80.810 - Administrative permit required.
A. No person shall place or operate or allow or suffer the placement or operation of any stationary vending facility which serves members of the public outdoors on any privately owned parcel or lot except in compliance with an administrative permit issued pursuant to this title. The application for such administrative permit may be filed by the operator of the vending facility and shall be countersigned by the owner of the subject lot or parcel, or by the authorized agent of the owner, pursuant to the requirements of Chapter 20.100.

B. A stationary vending facility is a vending facility which remains or operates on any single parcel or lot for more than a total of two-four (4) hours in any twenty-four-hour period.

C. An administrative permit is required for each individual stationary vending facility.

20.80.820 - Exception - Administrative permit.
A. Nothing in this part shall regulate or prohibit the following uses:
   1. The seasonal sale of Halloween pumpkins and Christmas trees and associated greenery pursuant to this title.
   2. The peddling of any product from an approved location within the sidewalk portion of a public street pursuant to Chapter 6.54 of Title 6.
   3. The placement or maintenance of a newsrack within the public right-of-way pursuant to Chapter 13.18 of Title 13.
   4. The vending of beverages, goods, wares, merchandise or services for the use of an on-site business when covered by other provisions in this title.

B. Notwithstanding the provisions of this part, no administrative permit shall be required for the placement or operation of a vending facility which solely involves the vending of whole, uncut, fresh fruits and vegetables and that meets and remains in full compliance with all of the following location and operational requirements:
   1. The vendor shall attend the vending facility at all times.
   2. The vending facility shall operate only on a site with an existing fixed-base host in operation on the site.
   3. All operations shall fully comply with all federal, state and local laws, regulations and guidelines including without limitation those applicable to the vending of fresh fruits and vegetables, including without limitation the California Health and Safety Code, the California Food and Agricultural Code, and all regulations and guidelines promulgated by the State of California and the County of Santa Clara thereunder, as the same may be amended from time to time.
   4. All activities, and the duration of those activities, shall first have been approved and authorized in writing by the owner of the real property on which those activities are planned to occur. The vendor shall have this written authorization available on-site and shall present it to the city upon the city's request.
5. The vendor shall completely remove all equipment, merchandise and other materials, including, without limitation, waste materials, from the site upon the conclusion of the vending activities, excepting such interior storage of equipment, merchandise or materials as may be allowed on the site with the permission of the owner or operator of the site.

6. The hours of operation of a vending facility shall be limited to the hours of operation of the fixed-base businesses on the fixed-base host site; however, the vending facility shall not operate, including any setup or breakdown activities, between the hours of 9:00 p.m. and 7:00 a.m. During hours in which the fixed-base host businesses are closed, the vending facility shall be removed from the parcel or lot on which it operates, or shall be stored indoors.

7. The vending facility shall be placed or operated only on paved surfaces and not on landscaped areas, nor shall the vending facility adversely impact any landscaping or landscaped areas.

8. The vendor shall not offer for sale or otherwise distribute any products other than whole, uncut, fresh fruit and vegetables.

9. Each vendor shall not use amplified sound for any purpose.

10. The vending facility or activities shall not obstruct the safe flow of vehicular or pedestrian traffic on or around the site.

11. The vending facility shall not occupy or obstruct more than two parking spaces required by this title for the operation of any other concurrent use.

12. The maximum dimensions of the vending facility shall be as follows:
   a. The maximum height of any portion of each vending facility, including any folding or collapsible appendage, shall not exceed ten feet.
   b. The maximum width of each vending facility or cart, including any folding or collapsible appendage, shall not exceed ten feet.
   c. The maximum length of each vending facility or cart, including any folding or collapsible appendage, shall not exceed twenty-four feet.

13. The vending facility shall not be placed on or operate within the boundaries of a hypothetical triangular area described by the point of intersection of the curb-line extensions of perpendicular or nearly perpendicular streets, and a line joining two points thirty feet from that point of intersection, measured along those curb-lines.

14. The vending facility shall not be placed or operate less than one hundred feet from a freeway on or off ramp.

15. The vending facility shall not be placed or operate less than twenty feet from a driveway curb cut.

16. The vending facility shall not be placed or operate within one hundred fifty (50) feet of an exclusively residentially used lot as measured from nearest point of vending facility to nearest point of the exclusively residentially used lot.

17. No vending facility shall be placed within or operate from a structure or stand which is attached to or bears directly upon or is supported by the surface of the site. Vending facilities shall operate exclusively from vehicles or carts or other conveyances which are fully mobile and have operational wheels in place at all times. Vending facilities shall not connect to temporary or permanent on-site water, gas, electricity, telephone or cable sources.

18. Vending facilities shall not be located less than fifteen feet from a parcel or lot line or a public right-of-way.

19. The vendor shall not place or utilize displays of fruits or vegetables that are detached from the vending facility or visible off-site.
20. All signs used in conjunction with any vending facility shall comply with the requirements of Title 23 of this Code and with the following requirements:

a. Free-standing signs shall not be allowed. All signs shall be mounted or attached to the exterior surfaces of the vending facility and shall not extend beyond the top, bottom, or side lines of the exterior surface to which it is mounted or attached. The dimensions of mounted or attached signs shall be included in measuring and calculating the maximum height, width and length of a vending facility under Section 20.80.870.

b. No sign shall revolve, rotate, move or create the illusion of movement, rotation or revolution, or have any visible moving, revolving or rotating surface parts.

c. No sign shall be illuminated, directly or indirectly; but this restriction does not preclude the incidental illumination of such signs by service lighting needed in the conduct of nighttime operations.

d. No signs shall emit or broadcast any sound, outcry, or noise.

21. The vendor shall maintain the vending facility and the area around the vending facility in a clean and orderly manner that does not create a public or private nuisance. For purposes of this part, a “nuisance” shall mean any act or omission which obstructs or causes substantial inconvenience or damage to the public or any member thereof, in the course of, or by the manner of, the exercise of rights created by this title.

22. Each vending facility shall display in a manner legible and visible to its clientele:

a. The name and phone number of the vendor operating the vending facility;

b. The number of the city business license issued to the vending facility; and

c. The property owner's name and phone number.

23. Each vendor shall have secured with the property owner of the site on which the vendor plans to operate, and prior to the commencement of any operation of the vendor, provision for all of the following services in a manner that comports with state and local laws and regulations, as the same may be amended from time to time:

a. Refuse disposal and sufficient trash and recycling receptacles within the area of the vending;

b. Litter removal within three hundred feet of the boundaries of the vending facility; and

c. Access to adequate sanitary facilities, including restrooms and/or portable sinks and toilets.
Hi Michelle, Jenny, Erin, and Misha,

I've also CC'ed Laura, our Fresh Carts organizer, on this email.

We are excited that this item is moving forward, and that there was no opposition to the actual recommendations that we are proposing at the meeting on Monday.

As Erin stated, we are a little worried that the delay going to Planning may delay the item arriving at Council -- but with the draft ordinance language ready and as much prep work as possible, I am also confident that this timeline is feasible. Please let us know if there is any other way we can support.

I did want to confirm -- is the Planning Department able to put together draft language for the changes, to expedite the process? I sent over what I had received from Jenny last year on the changes to the ordinance.

Many thanks for your hard work on this!

Best,
Jamie

On Wed, Sep 30, 2015 at 10:31 AM, McGurk, Michelle <Michelle.McGurk@sanjoseca.gov> wrote:

The Council meets at 1:30 p.m. and 7 p.m. on that date. It’s too early to know if the item will be scheduled for the afternoon or evening. It depends on other items on the agenda.

Michelle McGurk, Senior Executive Analyst

Office of the City Manager

200 E. Santa Clara Street, 17th Floor

San Jose, CA 95113

Phone: 408-535-8254

Email: michelle.mcgurk@sanjoseca.gov

From: Erin Healy [mailto:erinh@healthtrust.org]
Thank you and confirmation of topic at Planning Commission

Erin Healy <erinh@healthtrust.org>

Wed 9/30/2015 9:59 AM

To: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>; McGurk, Michelle <Michelle.McGurk@sanjoseca.gov>

Cc: Todd Hansen <toddh@healthtrust.org>; Misha Taherbhai <mishat@healthtrust.org>; Jamie Chen <JamieC@sacredhearts.org>

Hi Jenny and Michelle, I just wanted to say thank you for your support of the first 2 ordinance changes (reduced setback and increased time when a vendor can vend without a permit) for Fresh Carts and for your help in separating the Fresh Carts changes from larger street vending issues at the last community meeting on Monday night. I believe this will free up a lot of opportunities for vendors and hopefully result in vendors not needing a permit at all to vend.

I also wanted to confirm the date when this topic will be presented at the Planning Commission. We thought it was slated for October 21, but I noticed that you mentioned November in the community meeting presentation on Monday. Do you have an date yet? thanks,

--

Erin Healy
Director of Healthy Eating Initiative at The Health Trust
Phone: 408-513-8723

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Race day is this Thanksgiving, click the Turkey Trot banner below to register!
The following items were received after packets were distributed.
Planning Commission Chair Yob:

I represent a group of San Jose restaurant owners who oppose City staff’s proposed amendment to section 20.800.810 of San Jose’s Municipal Code which would extend the period that food vendors can remain on a parcel of land without having an administrative permit from the City. I have attached a letter in opposition to the amendment and will be present at the meeting tonight.

I look forward to speaking with you tonight. Thank you.

Very truly yours,

Dan J. Georgatos, Attorney at Law
739 Main Street, Suite E
Pleasanton, California 94566

Office: (925) 223-6696
Facsimile: (925) 223-6905
Cellular: (925) 989-4194

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Dan J. Georgatos, Attorney at Law
739 Main Street, Suite E · Pleasanton, CA 94566 · Office: (925) 223-6696 · Fax: (925) 223-6905
Cellular: (925) 989-4194 · Email: DanGeorgatos@gmail.com

December 2, 2015

Delivered via Electronic Mail

Dori Yob
Chair, San Jose Planning Commission
200 East Santa Clara Street
San Jose, CA 95113

RE: RESTAURANT OWNERS OPPOSING CITY OF SAN JOSE STAFF RECOMMENDATION TO AMEND TITLE 20, SECTION 20.80.810, OF THE SAN JOSE MUNICIPAL CODE

Chair Yob:

I represent a group of restaurant owners: (1) Luis Estrada and Fernando Galindo (La Grullensa Restraunt); (2) Cesar Barragan (Tacos Autlense); (3) Elena Cisneros and Cristina Alvarez (El Grullo Restaurant #1); (4) Carlos Flores (El Grullo Restaurant #2) ("Restaurant Owners").

The Restaurant Owners have been negatively affected by an epidemic of unpermitted mobile food vendors ("Taco Trucks") in East San Jose. These unpermitted Taco Trucks regularly violate sections 6.54 and 20.80.800 of the San Jose Municipal Code ("SJMC") by operating after statutorily permissible operating hours, for longer than the statutorily prescribed time limit, in violation of proximity limitations to other Taco Trucks, and in a manner that is inconsistent with the public’s health. And because these Taco Trucks generally operate after business hours, they are able to evade City enforcement efforts.

Yet, City Staff recommends that the City allow unpermitted Taco Trucks to operate two hours longer pursuant to an amended section 20.80.810 of the SJMC. The Restaurant Owners vehemently disagree with City Staff’s recommendation.

Because of Code Enforcement’s issues enforcing the current law, and because of health issues relating to Taco Trucks, the Restaurant Owner’s respectfully request that the San Jose Planning Commission table amending section 20.80.810 of the SJMC until the Restaurant Owners have meaningful dialogue with the City.

A. Current Law

Of course, as purveyors of food and beverage Taco Trucks are regulated by the State, County and City’s health departments. As for local operational regulations, section 6.54, et seq.
of the SJMC regulates “motor vehicle-based and mobile unit peddlers.” At issue here is section 20.80.800, et seq. of the SJMC regulating stationary vending facilities.

A food vendor is considered stationary if it remains and operates in the same parcel or lot for more than two hours. Section 20.80.800, et seq. provides for other substantive operational regulations for stationary vending facilities. Stationary vending facilities are not permitted on vacant lots and in fact must be located on the same site as a fixed base host so that they may share “parking, sanitary and trash disposal facilities.” Stationary vending facilities cannot operate between 10:00 P.M. and 6:00 A.M. Moreover, these facilities must be more than fifteen feet away from the street, 500 feet away from another vendor on private property, and 150 feet from residences.

Speaking to health issues directly, a stationary vending facility must display its health permit. Stationary vendors must also keep the area surrounding the facility clean, and ensure that the area does not become a nuisance.

B. The Planning Commission Should Not Approve the Proposed Amendments to Section 20.80.800, et seq. Because It Could Exacerbate Pre-existing Enforcement Issues and Does Not Further City Healthy Living Policy.

City Staff asserts that its proposed ordinance change allowing unpermitted, stationary vending facilities to operate for four hours is “consistent with the Design for a Healthful Community Major Strategy, the Vibrant Neighborhoods Goals and Policies, the Economic Development Goals and Policies, and the Land Use Goals and Policies that contribute to the City’s economic and physical health.”

---

1 (SJMC § 6.54.100(A)(2).) Section 6.54.070, subdivision (A) of the SJMC defines “peddling” as “[t]raveling by foot, motor vehicle, mobile unit or any other type of vehicle, from place to place, and selling or vending any goods, wares, merchandise, food, products, or any other thing or representation of value on any street, sidewalk, right-of-way, park or other public place.” Taco Trucks are often engaging in “peddling.” However, Staff’s recommendations and the related Title 20 provisions obviously contemplate that transfers at stationary food vending services occur on specifically zoned parcels of land. For the purposes of this discussion, therefore, the Restaurant Owners will restrict their analysis to the proposed amendments to Title 20. That being the case, many of the same regulatory problems arise within the framework of enforcing section 6.54, et seq. as there are several similar and overlapping provisions.

2 (SJMC § 20.80.810(B).) Obviously, if a Taco Truck operates from the same place for more than two hours it will be considered a stationary vending facility.

3 (SJMC § 20.80.840; SJMC § 20.80.890(H).)

4 (SJMC § 20.80.800, Table 20-170.)

5 (SJMC § 20.800.890(A).)

6 (SJMC § 20.80.890(D).)

7 (SJMC § 20.80.890(E).)

8 (See Title 20 Ordinance Amendments for Outdoor Vending on Private Property, November 18, 2015, at p. 4.)
Staff is completely incorrect as these policies apply to unpermitted Taco Trucks. Enlarging the permissible time frame during which Taco Trucks may operate without first obtaining an administrative permit exacerbates a pre-existing enforcement nightmare. Moreover, deleterious consequences that naturally occur as a result of the way in which these vendors choose to operate, as well as the food they serve, may degrade as oppose to promote public health and safety.

1. **Code Enforcement is already unable to enforce section 20.80.800, et seq.**

   In concluding that the amendment to 20.80.810 allowing unpermitted, stationary vending facilities to operate for four hours simplifies “Zoning Code regulations and reduce[s] the costs of compliance with City regulations for vendors,”9 City Staff completely fails to comprehend the current problem enforcing the current regulations on non-compliant, unpermitted Taco Trucks.

   In East San Jose, the vast majority of the Taco Trucks begin operating shortly before or after Code Enforcement closes. The vast majority of these Taco Trucks fail to adhere to virtually every of one of the operational conditions in section 20.80.890, and fail to satisfy many of the minimal requirements contained in Table 20-170. For example, many Taco Trucks are kitty corner to one another, and already operate well past section 20.80.810’s two-hour limitation period to operate without an administrate permit. Furthermore, as of January 23, 2015 there were at least twenty-five open Code Enforcement cases for Taco Trucks, and at the time twelve of them were closed because Code Enforcement could not locate the alleged truck.10

   Put in the most simplest of terms, Code Enforcement is already ill-equipped to properly police the current, non-compliant, unpermitted Taco Trucks. Providing greater leeway to operate a unpermitted Taco Truck for four hours as opposed to two hours will only serve to exacerbate those issues code enforcement has in presently and properly policing the pre-existing, unpermitted Taco Trucks given that the operators are just as likely to flout the four hour limitation as they are the two hour limitation.

   If by “simplifying the Zoning Code” City Staff means that the City will reduce Code Enforcement’s workload by avoiding the problem and amending the City Code so it is more difficult to violate, then Staff’s present solution is indeed “simple.” However, in the face of current enforcement concerns, the simplistic solution provides an insufficient policy basis to amend the ordinance as City Staff asks without actual evidence that extending the hours of operation for stationary vending facilities operating without an administrative permit satisfy some manifest public need.

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9 (See Title 20 Ordinance Amendments for Outdoor Vending on Private Property, November 18, 2015, at p. 5.)

10 (See Attachment A.)
2. *Amending Section 20.80.810 does not further the City’s health goals.*

Staff primarily asserts that amending section 20.80.810 to permit stationary vending facilities to operate for four hours is consistent with various City policies.\(^{11}\) Staff concludes that: (1) it would “provide jobs for the residents of all skill and education levels to support a thriving community”;\(^ {12}\) (2) promotes physical health;\(^ {13}\) (3) “[e]nsures that all residents have sufficient access to healthful food”;\(^ {14}\) (4) “encourages the location of healthful food retail, including farmers markets, in neighborhoods with high concentrations of fast food outlets compared to full-service grocery stores and fresh produce markets”;\(^ {15}\) collaborate with various partners to increase access to full-service grocery stores, fresh produce markets, and other healthy foods in low-income neighborhoods.\(^ {16}\)

Staff’s broad assessment, however, is over-inclusive. While fresh foods and vegetables are the types of foods that are largely consistent with the City’s goal to increase access to healthy food in low income areas, Taco Trucks actually provide the same unhealthy food that is currently present in those low income areas. By increasing the time during which these Taco Trucks may operate, the City may actually be thwarting any net gain in access to healthier food sources. In fact, the City would be encouraging the proliferation of fast food style foods in areas that may already have “high concentrations of fast food outlets”;\(^ {17}\) this is directly inconsistent with City policy.

Furthermore, Taco Trucks may pose severe public health and safety risks. As noted, these Taco Trucks regularly violate section 20.80.890, subdivision (D) of SJMC by failing to clean the area surrounding their facilities. Moreover, by operating at night these Taco Trucks encourage large crowds and loitering which may constitute a nuisance in violation of section 20.80.890, subdivision (E) of SJMC. Moreover, many of these Taco Trucks violate basic, black-letter health law by keeping their salsa unrefrigerated outside of their Taco Trucks. And to make matters

\(^{11}\) (See Title 20 Ordinance Amendments for Outdoor Vending on Private Property, November 18, 2015, at p. 4.)

\(^{12}\) (See Title 20 Ordinance Amendments for Outdoor Vending on Private Property, November 18, 2015, at p. 4 [citing Innovative Economy Policy IE 6.2].)

\(^{13}\) (See Title 20 Ordinance Amendments for Outdoor Vending on Private Property, November 18, 2015, at p. 4 [citing Major Strategy #11—Design for a Healthful Community].)

\(^{14}\) (See Title 20 Ordinance Amendments for Outdoor Vending on Private Property, November 18, 2015, at p. 4 [citing Vibrant Neighborhood Goal VN-3—Access to Healthful Foods].)

\(^{15}\) (See Title 20 Ordinance Amendments for Outdoor Vending on Private Property, November 18, 2015, at p. 4 [citing Vibrant Neighborhoods Access to Healthful Foods Policy VN-3.5].)

\(^{16}\) (See Title 20 Ordinance Amendments for Outdoor Vending on Private Property, November 18, 2015, at p. 4 [citing Vibrant Neighborhoods Access to Healthful Foods Policy VN-3.8].)

\(^{17}\) (See Title 20 Ordinance Amendments for Outdoor Vending on Private Property, November 18, 2015, at p. 4 [Vibrant Neighborhoods Access to Healthful Foods Policy VN-3.5.5’s goal is to “Encourage the location of healthful food retail, including farmers markets, neighborhoods with high concentrations of fast food outlets compared to full service grocery stores and fresh produce markets.”], underline added.)
worse, almost all of these unpermitted Taco Trucks violate section 2.80.840 of the SJMC by failing to affix themselves to a fix base host to access essential sanitation facilities. Accordingly, notwithstanding the enforcement and health food issues, the actual operations of these unpermitted Taco Trucks threaten public health and safety.

C. Conclusion

Non-compliance should not be greeted with leniency. By extending the hours of operations for unpermitted stationary vending facilities, the City is simply rewarding bad operators of unpermitted Taco Trucks. Instead of extending the hours of operations on these unpermitted Taco Trucks, the City should focus on enforcing the code as written. The Restaurant Owners request that the Planning Commission table discussing whether to amend section 20.80.800 until they have the opportunity to discuss enforcement issues with the City.

Respectfully,

[Signature]

Dan J. Georgatos
Attorney for The Restaurant Owners

Cc:

Ed Abelite, Vice-Chair – via Electronic Mail
Michelle Yesney – via Electronic Mail
Edesa Bit-Badal – via Electronic Mail
Shiloh Ballard – via Electronic Mail
Nick Pham – via Electronic Mail
Brian O’Halloran – via Electronic Mail
Jenny Nusbaum – via Electronic Mail
ATTACHMENT A

CITY OF SAN JOSE –
CODE ENFORCEMENT LOGS FOR
TACO TRUCKS - JANUARY 23, 2015
<table>
<thead>
<tr>
<th>Business Name</th>
<th>Location</th>
<th>LPN</th>
<th>Status of case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tacos Los 3 Reyes</td>
<td>2520 Story Rd (inside Millenium Auto Service Shop)</td>
<td>4HT6843</td>
<td>Case Closed- No food truck observed at time of the inspection</td>
</tr>
<tr>
<td>La Altena</td>
<td>173 Alum Rock Ave (next to Kartoyz auto)</td>
<td>4EZ2129</td>
<td>Case Closed- No food truck observed at time of the inspection</td>
</tr>
<tr>
<td>Las Rosas Tacos (in the Mio Lindo Parking lot)</td>
<td>2155 Story Rd.</td>
<td>4G06173</td>
<td>Case Closed- No food truck observed at time of the inspection</td>
</tr>
<tr>
<td>No name (located at JB Liquors and Deli)</td>
<td>1096 McLaughlin Ave</td>
<td></td>
<td>Case Open- Permit has expired. Food truck has been asked not to operate until the permit has been obtained.</td>
</tr>
<tr>
<td>Tacos Morelos (located at Kal Glass shop)</td>
<td>2022 Alum Rock</td>
<td></td>
<td>Case Closed- No food truck observed at time of the inspection</td>
</tr>
<tr>
<td>No name (near Blue Lagoon Aquarium)</td>
<td>1936 Alum Rock</td>
<td></td>
<td>Case Closed- No food truck observed at time of the inspection</td>
</tr>
<tr>
<td>No name (operating near David’s Rally Wheels)</td>
<td>1991 Alum Rock</td>
<td></td>
<td>Case Closed- No food truck observed at time of the inspection</td>
</tr>
<tr>
<td>Troca Taqueria (located at Valero gas station)</td>
<td>1155 Tully Rd.</td>
<td>4KW9284</td>
<td>Case Open- under investigation</td>
</tr>
<tr>
<td>Mi Chalateca</td>
<td>515 S. 10th</td>
<td></td>
<td>Case open- No food truck has been observed on site to date at time of inspection</td>
</tr>
<tr>
<td>Parchitas</td>
<td>2148 Story Rd.</td>
<td></td>
<td>Case Closed- No food truck observed at time of the inspection</td>
</tr>
<tr>
<td>Mariscos E Rincon</td>
<td>2294 Story Rd.</td>
<td></td>
<td>Case Closed- No food truck observed at time of the inspection</td>
</tr>
<tr>
<td></td>
<td>2241 Story Rd.</td>
<td></td>
<td>Case Closed- however the case may be reopened based on recent inspection</td>
</tr>
<tr>
<td></td>
<td>2026 Alum Rock</td>
<td></td>
<td>Case Closed- No food truck observed at time of the inspection</td>
</tr>
<tr>
<td>Near Firestone</td>
<td>2240 Alum Rock</td>
<td></td>
<td>Inspection needed-need to field verify</td>
</tr>
<tr>
<td>Near La Estrella Market</td>
<td>1306 Julian St.</td>
<td></td>
<td>Inspection needed-need to field verify</td>
</tr>
<tr>
<td>Near Quality Produce</td>
<td>1696 McKee</td>
<td></td>
<td>Case open- Under investigation. Property owner has a permit for outdoor vending business. Business must operate within hours of fixed base host.</td>
</tr>
<tr>
<td></td>
<td>2520 Story Rd.</td>
<td></td>
<td>Case Closed- No food truck observed at time of the inspection</td>
</tr>
<tr>
<td></td>
<td>1148 Market</td>
<td></td>
<td>Inspection needed-need to field verify</td>
</tr>
<tr>
<td>Tacos La Peralta (near Tropicana Liquors)</td>
<td>2770 Story Rd.</td>
<td></td>
<td>Case closed- This location was a duplicate</td>
</tr>
<tr>
<td>No name (located on Realty World property)</td>
<td>2731 Alum Rock</td>
<td></td>
<td>Case open- under investigation</td>
</tr>
<tr>
<td>Tacos el Paisa (Mi Rancho Supermarket)</td>
<td>2806 Story Rd.</td>
<td></td>
<td>Case open- under investigation</td>
</tr>
<tr>
<td>Nayos Taqueria</td>
<td>Alum Rock and Scharff</td>
<td>4LD8522</td>
<td>Inspection needed-need to field verify</td>
</tr>
<tr>
<td>Business Name</td>
<td>Location</td>
<td>LPN</td>
<td>Status of case</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>----------------------------------------</td>
<td>------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Taqueria La Nueva</td>
<td>Story and Knox (next to Calderon Tires)</td>
<td>4LE4879</td>
<td>Inspection needed - need to field verify Address on truck is 2168 Story Rd.</td>
</tr>
<tr>
<td>No name</td>
<td>Story Rd. and Adrian (next to Dagios florist)</td>
<td></td>
<td>Inspection needed - need to field verify</td>
</tr>
<tr>
<td>Tacos Los Molcajetas de Quintana</td>
<td>Story Rd. and Adrian (next to Story Liquor)</td>
<td>4KV8637</td>
<td>Inspection needed - need to field verify Address on truck 1622 Marsh St.</td>
</tr>
</tbody>
</table>