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To: Mayor and City Council
Hispanic Advisory Committee
Business Advisory Committee

From: Clint Spencer, City Planner and Mark Morgan, Assistant to the City Manager

Subject: Business Advisory Committee Recommendation to City Council

Date: February 6, 2013

Background

At the January 28, 2013 meeting of the city council, staff was directed to research and prepare draft regulations regarding mobile and temporary vendors within the city limits. Many cities statewide require licensing of mobile vendors. In the case of vendors selling or preparing food, these businesses are already regulated and inspected by the Oregon Health Authority statewide and the county health department locally.

There are two classes of vendors which must be addressed in any regulations the city develops. There are vendors who set up on a property for a weekend or few days, such as fireworks stands, and there are vendors which set up on a property for much longer durations and challenge the notion of being a temporary vendor and exempt from building or zoning regulations. Most cities regulate longer duration mobile vendors differently and staff recommends that a minimum set of regulations be established over longer duration mobile vendors.

Draft Regulations

Below is a comprehensive list of regulatory standards proposed by the city for mobile vendors:

1. Mobile vendors shall obtain a mobile vendor permit from the City of Hermiston.
2. The city will issue a mobile vendor permit when all of the following criteria are satisfied:
 - a. The applicant presents written permission from the property owner to occupy the property.
 - b. The applicant presents a site plan drawn to scale and demonstrating compliance with all city requirements, including the setbacks in the zone.

- c. The applicant pays an application fee established by the city council. (Staff recommends that the application fee be set at \$100 initially)
3. A mobile vendor permit issued by the city shall be valid for 180 days in any twelve month period. At the expiration of the 180 day period, the mobile vendor must vacate the site and obtain a new permit for a different location. A permit will not be issued to the same vendor for the same site until 12 months have elapsed from the first permit issuance.
4. The city will issue one permit at a time for any single lot.
5. Mobile vendors must be located on property zoned for commercial use. Commercial zones in the city are defined as Central Commercial (C-1) and Outlying Commercial (C-2).
6. Mobile vendors must be located on a paved parking area conforming to the design standards of 157.179 of the Hermiston Code of Ordinances and subject to the following requirements:
 - a. Mobile vendors must be located on parking spaces which exceed the minimum required by 157.176 of the Hermiston Code of Ordinances for the primary or permanent use of the property.
 - b. Mobile vending units and seating areas shall not block required fire lanes and internal circulation of the parking lot.
 - c. Mobile vending units and associated seating must be located entirely on private property and may not encroach on a public right-of-way.
 - d. Vision clearance areas as established in 157.142 of the Hermiston Code of Ordinances shall be maintained.
7. Mobile vendors may not erect or utilize shade structures over seating areas. If shading is desired, mobile vendors must utilize a removable umbrella on a single pole.
8. Mobile vendors must employ temporary seating such as picnic tables and benches or similar temporary seating. Enclosed or permanent seating areas are not permitted.
9. Mobile vendors must comply with Chapter 155 of the Hermiston Code of Ordinances regarding the erection and use of signage at all times.
10. Mobile vendors which prepare or sell food must obtain approval from the Oregon Health Authority and Umatilla County Health Department at all times.
11. Mobile vendors must display at all times the mobile vending permit issued by the City of Hermiston. The vendor must also retain on-site all permits and approvals issued by the Oregon Health Authority, Umatilla County Health Department and Hermiston Fire and Emergency Services.
12. Mobile vending units must be kept in mobile condition and licensed and insured as required by the State of Oregon. At no time during the life of the permit shall the wheels be removed from the mobile vending unit.
13. Units must be self-contained with regards to water and wastewater use. City or private water and wastewater connections are not permitted.
14. If connection to an external electrical source is needed, the connection must be of a type which can be quickly disconnected and must comply with all applicable laws, including those established by Hermiston Fire and Emergency Services.
15. Hours of operation shall be limited from 8 am to 9 pm on all days.

16. In the event that a vendor is out of compliance with these provisions, the city will levy fines against both the vendor and property owner. Each day of non-compliance shall be treated as a new violation.

Exceptions:

The following classifications of businesses shall be exempt from these provisions:

1. A mobile vendor operating on the Umatilla County Fairgrounds and subject to the requirements of ORS 565.
2. A mobile vendor operating on City owned property, or on public right-of-way with the approval of the Hermiston City Council or Hermiston Parks and Recreation Committee.
3. A mobile vendor occupying a single site for 14 days or less in any 12 month period.
4. Charitable organizations performing fund-raising activities.

Impact

Any time new regulations are proposed, they are likely to have a direct and immediate impact that should be carefully weighed prior to adoption. In the case of the draft regulations, if they were to be adopted by the city, there are several existing mobile vendors who would not be able to meet the requirements and would be forced to move to a different location. Below is a list of businesses in operation as of February 1 which would be out of compliance and the non-complying factor(s) in parentheses:

- 1930 N First Street (No paved parking area/Shade structure over tables)
- 680 W Harper Road (No paved parking area/Incorrect zoning)
- 1390 N First Street (Two mobile units on one lot)
- 230 SW 11th Street (Shade structure over tables/Unclear if existing business has adequate parking)
- 320 S Highway 395 (Shade structure over tables)
- 735 S Highway 395 (Permanent, enclosed seating)

In the case of the first two vendors listed above, it is not possible to comply with the paved parking requirement and those vendors would have to relocate. The vendor at 735 S Highway 395 utilizes an external mobile kitchen to prepare food for permanent interior seating. This business also would not be able to operate under these rules. The remaining vendors could possibly find alternate solutions within the regulations.

Enforcement and Administration

There are two processes which need to be developed to implement these regulations. The issue of administration will require staff resources to issue permits to vendors. Staff time will be required to review site plans and verify that the application information is accurate. It is estimated that a permit will require a 24-48 hour processing period.

Enforcement will also require staff time. The enforcement burden will fall to the police department in general and the code enforcement division specifically. If a vendor stays beyond the length of their permit or is otherwise out of compliance with the regulations, they will have to be inspected by the code enforcement officer and cited if necessary. Citations will have to be processed by the city prosecutor and municipal court.

For enforcement, staff suggests classifying violation of the proposed Mobile Vendor Licensing Act as a Class D violation. The City adopted the schedule of penalties for a violation used by the state, Ord. 2182, and the amount of the fine under state law for a Class D violation is a maximum of \$250 per day, presumptive fine of \$110 or a minimum fine of \$60. A table setting out the schedule of state violations is attached for your information.

Each day that a vendor operates in violation of the Act or a landlord allows an unlicensed vendor to operate on his/her property w/out a license is a separate violation. The City may want to require that advanced notice be given to the landlord that the vendor is not in compliance with the Act before the landlord is subject to being fined.

Conclusion

Attached to this memo is a map showing the city's commercial zones and the existing Oregon Health Authority regulations. These attachments will help to provide reference for where businesses may locate under the proposed rules and what rules are already in place. The draft regulations proposed are similar in scope to those in place in other communities in Oregon.

The Business Advisory Committee and Hispanic Advisory Committee will review these recommendations prior to their submission to the city council. If the Business Advisory Committee and Hispanic Advisory Committee each recommend that the city council consider adoption, the city council will review these recommendations, as may be amended by the committees. Amendments and changes should be recommended prior to final city council action.