

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director 

DATE: September 8, 2014 (CC Meeting of 9/17/2014)

SUBJECT: Consider: 1) Proclaiming the Welcome Home Soldier Foundation's Moonshiners Barbeque Event on October 4, 2014, and the Rotary Club of Moorpark's Civil War Reenactment on November 8-9, 2014, as Community Events for the Purposes of Obtaining Temporary Food Facility Permits from the County of Ventura Environmental Health Division; and 2) Directing Staff to Prepare a New City Council Policy on Proclaiming Certain Public Events as Community Events

BACKGROUND

Temporary Use Permit Application No. 2014-19 was filed on July 18, 2014 by the Rotary Club of Moorpark for a historical reenactment of the American Civil War, including encampments, to take place on November 8-9, 2014 at the Waste Management property east of Moorpark College. Temporary Use Permit No. 2014-26 was filed on August 26, 2014 by the Welcome Home Soldier Foundation for a Moonshiners Barbeque Fundraising Event to take place on October 4, 2014 at the PennyMac parking lot (6101 Condor Drive). Both of these events are open to the public, sponsored by Moorpark-based non-profit organizations as fundraising events, and are being held on private property. Both of these events are also seeking a temporary food facility permit from the County of Ventura Environmental Health Division. Because these events are being held on private property instead of public property, the City needs to proclaim these events as "community events" in order for the County to consider temporary food facility permits.

DISCUSSION

Retails sales of food are regulated by the California Health and Safety Code (Section 113700 et seq.), with specific regulations identified for temporary food facilities at community events. Health and Safety Code Section 113755 defines a community event as, "An event that is of civic, political, public, or educational nature, including state

and county fairs, city festivals, and other public gathering events approved by the local enforcement agency. The County of Ventura Environmental Health Division is the local enforcement agency for this part of the Health and Safety Code.

On May 14, 2013, the County of Ventura Board of Supervisors approved a recommendation of the County's Environmental Health Division to define a community event to be either be 1) a planned public gathering on public property sponsored by a non-profit organization formed for charitable purposes or a governmental entity or 2) a temporary event where a local jurisdiction has proclaimed it to be a community event. A copy of the staff report to the Board of Supervisors is attached. The Environmental Health Division would only consider a temporary food facility permit for an event that meets one of the above definitions. It should be noted that a temporary event where food is only served from a County-licensed mobile food facility (e.g. food truck) is exempt from the requirement for a temporary food facility permit. A copy of the County staff report is attached.

The Moonshiners Barbeque and the Civil War Reenactment events both meet the State's definition of a community event for the purposes of being recognized as temporary food facilities under the Health and Safety Code. However, because they are being held on private property instead of public property, a proclamation from the City is required in order for the County of Ventura Environmental Health Division to recognize these events as community events. Staff recommends that such a proclamation be made by the City Council.

In order to expedite the proclamation of a local temporary event as a community event in the future, staff recommends creation of a Council policy that allows an expedited process to proclaim certain additional types of temporary events as community events. Such events that would be consistent with the State's definition of community event could include:

- Temporary events open to the public operated by City of Moorpark non-profit organizations on public or private property for which a Temporary Use Permit has been approved.
- Temporary events open to the public in the commercial or industrial zones authorized by Section 17.20.060 of the Zoning Ordinance (Christmas tree sales, circuses, festivals, sidewalk sales, special events, and outdoor sales) for which a Temporary Use Permit has been approved.

Should the City Council concur, staff could be directed to prepare such a policy for Council consideration at a future meeting.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

1. Proclaim the Welcome Home Soldier Foundation's Moonshiners Barbeque Event on October 4, 2014, and the Rotary Club of Moorpark's Civil War Reenactment on November 8-9, 2014, as Community Events as defined by Section 113755 of the California Health and Safety Code for the purposes of obtaining temporary food facility permits from the County of Ventura Environmental Health Division; and
2. Direct staff to prepare a new City Council policy on proclaiming certain public events as community events to be incorporated in the next update of the city Council Policies Resolution.

Attachment 1: May 14, 2013 Staff Report to Board of Supervisors

May 14, 2013

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, California 93009

Subject: Receive and File presentation regarding Community Events, Temporary Food Facilities and Mobile Food Facilities; authorize staff to recognize an event as a Community Event based on the proposed criteria; authorize continuation of fee waivers and reductions in the Temporary Food Facility program; and authorize permit requirements for Mobile Food Facilities.

Recommended Actions:

1. Receive and file a presentation regarding Community Events, Community Event Organizers, Temporary Food Facilities, and Mobile Food Facilities programs regulated by the Environmental Health Division.
2. Authorize the Environmental Health Division to designate an event not previously recognized by the Division as a Community Event using the criteria discussed in this Board letter.
3. Authorize staff to continue the fee waiver and reductions for non-profit and for profit Community Event Organizers and Temporary Food Facility operators; and implement regulatory oversight of Community Events and Temporary Food Facilities as described in this Board letter.
4. Authorize the Environmental Health Division to offer a one year grace period to vehicles that do not meet state code requirements as Mobile Food Facilities and allow these vehicles to obtain a permit as a Temporary Food Facility effective July 1, 2013. After July 1, 2014 vehicles must obtain a permit as a Mobile Food Facility or cease operating in Ventura County.

Fiscal/Mandates impact:

1. Mandatory: Yes
2. Authority: California Health and Safety Code, (California Retail Food Code), Section 113700 et seq.
3. Source of Funding: Permit fees; Board Cost Reduction.
4. Funding Match Required: No
5. Impact to Other Department(s): None.

Environmental Health Division	<u>FY 2012-2013</u>	<u>FY 2013-2014</u>
Revenue	\$3,375,513	\$3,779,281
Costs:		
Direct	\$3,339,204	\$3,504,430
Indirect-Dept.	\$16,476	\$196,378
Indirect-County CAP	<u>\$19,833</u>	<u>\$78,473</u>
Net County Cost	0	0
Recovered Indirect Cost (Department and County CAP)	\$36,309	\$274,851

FY 2012-13 Budget Projection for Org 4754 - Environmental Health Division Community Services				
	Adopted Budget	Adjusted Budget	Projected Budget	Estimated Savings (Deficit)
Appropriations	\$3,661,669	\$3,679,626	\$3,570,333	\$109,293
Revenue	\$3,573,786	\$3,573,786	\$3,586,436	(\$12,650)
Net Cost	\$87,883	\$105,840	(\$16,103)	\$121,943

Sufficient revenue and appropriations are available in the current year's Adjusted Budget and will be included in the FY14 Preliminary Budget.

DISCUSSION:

Executive Summary:

The Centers for Disease Control (CDC) estimates that each year roughly 1 in 6 Americans or 48 million people will get sick, 128,000 will be hospitalized and 3,000 people will die from foodborne diseases. The CDC also estimates that between the years 2000 and 2008 there were 747 confirmed cases of foodborne illness from 20 outbreaks associated with fairs, festivals and temporary mobile food services in California. It is noteworthy that no foodborne illness outbreaks or significant enforcement activities concerning Temporary Food Facilities have occurred at Community Events in Ventura County over the past 12 years.

In Ventura County, Community Events and the Temporary Food Facilities (TFFs) that operate at these events have evolved into an extremely popular way of raising funds for various non-profit and for-profit organizations. As the local enforcement agency, the Environmental Health Division (Division) is responsible for issuing health permits to Community Event organizers and TFFs, and for conducting inspections of these facilities to ensure that state safe food handling standards are being met. A significant increase in the number of Community Events has resulted in an increase in demands for TFF permits. This increase coupled with the Board-authorized waiver and reduction of permit fees for Event organizers and TFFs have presented challenges to maintaining regulatory oversight of the TFFs operating at these events. Additionally, the growth of the gourmet food truck industry has raised significant questions related to the types of permits the Division issues to Mobile Food Facilities (MFFs) operating in Ventura County.

Today, to address these challenges and to ensure that state code requirements are uniformly applied we are seeking your Board's guidance as to: 1) the type of event that should be considered a Community Event; 2) the continued waiver or reduction of TFF permit fees authorized by your Board, and the effect this will have on the regulatory oversight of TFFs by this Division; and 3) the administration and type of permit the Division should issue for MFFs that do not meet state code requirements.

Community Events:

The first item for which the Division is seeking direction from your Board is to identify what types of events the County wants to formally recognize as a "Community Event". More specifically, the Division is seeking direction on whether an event not previously designated as a Community Event should be considered a Community Event based on the following criteria: if the event is: 1) held on public property and the organizer or sponsor is a non-profit organization; or 2) formally recognized by a local jurisdiction adopted proclamation or resolution designating the event as a Community Event.

Currently, the California Health and Safety Code (state code) defines a Community Event as:

An event that is of civic, political, public, or educational nature, including state and county fairs, city festivals, circuses, and other public gathering events approved by the Local Enforcement Agency.

This definition is very broad and clearly reflects the legislature's intent to provide the local enforcement agency wide latitude to determine which types of events qualify as a Community Event. Moreover, the code does not differentiate between events hosted or put on by non-profit or for-profit organizers, nor does it specify whether these community events should be held on private or public property. The only criteria in the code are that the event must be of a "civic, political, public, or educational nature". As such, the Division has used a very expansive definition and, not surprisingly, the number of events has grown over the years. In 2001 there were approximately 39 Community Events held in Ventura County, and by 2012 the number had grown to 457 events.

Over the years, the Division has attempted to clarify what types of activities should be considered a Community Event by requiring that the event: 1) be a planned public gathering on public property; and 2) be sponsored by a non-profit organization formed for charitable purposes or a governmental entity. In practice this approach presumes that because the event is held on public property and is run by a non-profit or governmental organization, the event is de facto a Community Event. It does not address or specify how the event is of a civic, political, public, or educational nature.

The determination of what constitutes a Community Event is extremely important not only to the event organizers but also to the individual TFFs. The importance stems from the State statutes which allow TFFs to operate only at Community Events, and further limits non-profit charitable TFFs to operate at no more than 4 events per year.

In recognition of the importance of fund raising events; and to accommodate the numerous organizations and other fund raising events, the Division has taken a very expansive interpretation of what types of events should qualify as Community Events. In an effort to further clarify how this determination can be made, the Division introduced an option whereby a local jurisdiction could formally recognize an event through a declaration or proclamation identifying it as a Community Event. In simple terms, for example, if a City Council adopted a resolution recognizing an event as a Community Event, the Division accepted the designation. The notion here is that the City Council represents the "community" and as such should be the entity determining whether an event is a Community Event or not.

To date, only the following events have been formally recognized by local jurisdictions as being Community Events:

- Events open to the public held at the Hummingbird Ranch – private property - City of Simi Valley.
- The WAV – art events open to the public held at the artists' colony – City of Ventura.
- Harvest Month – Heritage Valley - October 2010 – Board of Supervisors.
- Downtown Ventura Organization
- Simi Town Center

The code identifies circuses, state and county fairs, city festivals, swap meets and certified farmers markets as Community Events. It appears that the legislature considers large events with broad social and demographic appeal to be Community Events. Clearly these events are meant to be a benefit to the community in which they will be located and as such the local jurisdiction is in the best position to determine if the event is of a civic, political, public, and educational nature. The five events listed above are recognized by local jurisdictions as Community Events and are consistent with the types of Community Events recognized in the state code.

This approach creates a more transparent decision making process and provides flexibility to local jurisdictions to determine the civic, political, public, and educational nature of an event that may be unique to their communities.

Events could be added to this list if the event is held on public property and the Community Event organizer is a non-profit organization formed for charitable purposes, or the event is held on private property and the local governmental jurisdiction issues a proclamation or resolution designating the event as a Community Event. Events that do not meet these criteria will not be considered Community Events. Although TFFs would be prohibited at such events, prepared foods could still be available to the public from mobile food facilities (MFFs) provided they possess a valid annual permit from the Environmental Health Division.

Temporary Food Facilities – Permit Fee Waivers:

The second item in which we seek direction from your Board, concerns whether your Board wants to continue the practice of waiving permit fees or offering a reduced permit fee to Community Event organizers and TFFs.

The California Health and Safety Code (state code) defines a TFF as:
A food facility approved by the enforcement officer that operates at a fixed location for the duration of an approved Community Event or at a swap meet, only as part of the Community Event or swap meet.

In Fiscal Year 2001/02, in an effort to reduce permit fees to TFFs and Community Event Organizers (organizers), your Board authorized the Division to waive the entire permit fee for non-profit TFFs and organizers, and provide a 50% fee reduction to any for-profit organizers and TFFs, provided they completed an annual Food Handlers Training class offered by the Division. The rationale for this action was that TFF operators and event organizers who successfully completed this course would be more familiar and operate in conformance with state standards concerning the design, maintenance and operation of these types of transient food facilities, thereby reducing the Division's staff regulatory oversight of these facilities.

Although we expected our oversight to decrease after the organizers and TFF operators successfully completed the annual training class, our field observations during these events revealed that many operators failed to comply with minimum code requirements during the set-up and operation of their TFFs. This in turn led to an increase, not a decrease, in EHD staff oversight at these events. In 2001 there were approximately 400 TFFs operating at Community Events in Ventura County. In 2012 this Division inspected and issued permits to approximately 2,167 TFFs.

The increase in the number of Community Events and TFFs operating at these events has created operational problems within the Community Services program. In 2001, the Division was able to provide training, inspect all TFFs operating at Community Events, and absorb the cost without significantly impacting its overall Food Facility inspection program. This has not been the case over the past several years.

Due to the increase in the number of Community Events and TFFs operating at these events, coupled with limited revenue as a result of fee waivers, the Division can no longer absorb these costs or provide the same level of regulatory oversight as we have in the past. A further impact to the program is that a majority of Community Events take place after hours and during the weekend, and in order to maintain regulatory oversight at these events Division staff have been diverted from their normal inspection duties, which has prevented them from maintaining the Board-directed inspection frequency at our fixed location facilities.

Since 2001/02, partial cost recovery for this waiver program has been accomplished through fee adjustments authorized by your Board to all fee categories in the EHD retail food program. The remaining costs are reflected in the EHD budget as net County cost. The Division estimates the revenue shortfall in fiscal year 2012-13 for the TFF program will be \$251,353, of which approximately \$180,000 represents waived fees.

The Community Services Fee Resolution, which will be before the Board next week (May 21, 2013), includes a proposed 4% fee increase in our food facility permit fees, which include the TFF fees. This proposed increase will help recover a small portion of

the TFF program costs, and will allow us to increase hours for our two part-time weekend staff. This will help resolve some of the staffing issues, but will not completely address the demands of the TFF permitting and inspection program.

If your Board continues the current fee waiver program, the Division will accelerate efforts to reduce its TFF permit and inspection oversight to ensure inspection frequency targets at fixed facilities are met. We will look at expanding our annual permit program for qualified TFF operators, and focus our oversight efforts on periodic inspection of TFFs that present the greatest potential for the transmission of foodborne illness based on the types of potentially hazardous foods they prepare and provide to the public. Finally, for the non-profit charitable TFFs and TFFs that only sell pre-packaged non-potentially hazardous foods, the Division will no longer conduct routine monitoring inspections. Instead the Division will conduct inspections only as part of a complaint investigation.

Mobile Food Facilities:

The final area where the Division seeks direction from your Board concerns the permit requirements and continued operation of Mobile Food Facilities (MFFs). In recent years the "Gourmet Food Truck" industry was launched and the gourmet food truck craze found its way to Ventura County. Community Event organizers jumped on the gourmet food truck craze by inviting trucks from Los Angeles County to participate in their event with the hope of attracting larger crowds. Many of the trucks from Los Angeles County are older vehicles that had been wrapped in colorful artwork but did not meet current code requirements, and therefore were unable to obtain a permit and operate as a MFF in Ventura County.

The state code defines a Mobile Food Facility, in pertinent part, as:

Any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed retail. Mobile food facility does not include a transporter used to transport packaged food from a food facility, or other approved source to the consumer.

The code goes on to describe the design and operational requirements that must be met before a permit from the local enforcement agency can be issued. In summary the state code requires these vehicles must have mechanical refrigeration, three compartment sinks with hot and cold running water, mechanical ventilation, and waste water holding tanks sized in conformance with code requirements. Typically, the older MFFs do not have the appropriate equipment to maintain proper food temperatures when these vehicles remain stationary for long periods of time, as they often are at these gourmet food truck events.

The state code requires that a health permit for a MFF can only be issued if all design requirements have been met. As a result, the Division was unable to issue health permits to older vehicles that did not meet the design requirements, many of which were from Los Angeles County and had permits from that county issued under the previous guidelines. Due to the increasing popularity of these Gourmet Food Truck events, and the influx of older vehicles from Los Angeles County, in addition to vehicles from within Ventura County that could not be permitted as MFFs, the Division made an effort to accommodate the event organizers and allow these vehicles to operate with a TFF permit. However, under the law TFFs may only operate at Community Events.

The design and operational requirements for a MFF are much more stringent than requirements for a TFF. Thus, the Division's attempt to create an accommodation has had an unintentional effect of creating an uneven playing field in that vehicles that cannot meet requirements as a MFF are now operating as TFFs with reduced requirements and permit fees, while permitted MFFs must meet more stringent design and operating requirements and pay a higher permit fee.

Given the inequities associated with the current MFF permitting process, the Division believes it is no longer viable to issue TFF permits to vehicles which should meet MFF standards. To this end, the Division recommends that your Board authorize a one year grace period in which non-code conforming MFFs will be allowed to operate as TFFs to give them time to meet the code requirements as a MFF. The Division will notify the vehicle owners and operators about this grace period and will work with them if they choose to go through the plan check process to upgrade their vehicles and come into compliance with the code requirements as MFFs.

The County Executive Office, Auditor-Controller's Office, and County Counsel have reviewed this matter. Please call me at 654-2818 or Betty Huff at 654-2814 if you have any questions.



William C. Stratton, Director
Environmental Health Division