



July 17, 2015

Executive Report

Prepared by: Fred McCarthy, Mayor

Regarding: Complaint About the Approval Process for a Food Van in Langley, WA

Background

Langley food Van Ordinance 1009 was passed on February 2, 2015.

A Request for Proposals (RFP) was prepared by the community planning director.

One individual, Mr. Joe Wierzbowski, responded to the RFP.

Mr. Wierzbowski filled out and submitted a food van application form from the city and dated the application April 20, 2015 and submitted it.

An approval letter was granted to Mr. Joe Wierzbowski to operate a food van in Langley on June 4, 2015

The food van commenced operation on June 18, 2015 in Langley, WA in a location at the juncture of First Street and Anthes in front of Whale Bell (Hladky Park).

Verbal Complaints Received June 18, 2015 About the Food Van

The following complaints were received the first day of operation June 18, 2015.

1. The truck was very big in scale verses what had been expected.
2. The site selected was blocking the view over Whale Bell Park.
3. The generator on the truck was too loud.
4. The serving window seemed too low.
5. There were no graphics on the truck.
6. There were not sufficient provisions for garbage cans.
7. Electrical power was run along the ground to the vehicle.
8. The power receptacle at the park was locked.
9. The power available was 20 amp service and the van needed/desired 30 amp service.

Initial complaints were listened to by the city and options were considered for siting the van and addressing some of the offending issues with the van.

It was decided to move the van to a spot in front of the Dog House. This location was thought to be better because:

1. The view was not being blocked
2. The business owners agreed to have the van in front of their business for the 2015 season only.
3. The building adjacent to the van location was currently not open for business.
4. The owners were open to providing power access from the Dog House.

A citizen complaint was filed on June 26, 2015 regarding the approval process undertaken by the Community Planning Department of the City of Langley, Washington, with respect to the Implementation of the provisions of Food Van Ordinance #1009 and the application and approval process for the operation and siting of the food van in the city.

Specific Written Complaints from Citizen received on June 26, 2015

1. The City Planning Dept. knowingly and illegally approved a non-compliant application (under both the Food Vending Ordinance and Design Review section of the Zoning Code)
- 2 The City of Langley is facilitating the continued operation of this business with further non-compliant actions.
3. In it's current state the food truck can not be allowed to continue operation.
4. The project needs to go through the proper application process and brought into compliance.
5. The operator of the business, while being put in a difficult situation, has shared responsibility as the applicable codes are readily available for review.
6. The City will need to determine how to compensate the business owner for their part in the matter.

Notification To Discontinue Food Van Operations - was issued on July 2, 2015

Special Meeting of the City Council – was called on July 3, 2015 at 7:00pm

Regular City Council Meeting and Discussion of Food Van Approval and Hearing of Citizen Comments – occurred on July 6, 2015

The City Council Took Action to Modify the Food Van Ordinance - Ordinance 1016 on July 6, 2015 and elected to remove the length requirement from the ordinance among other modifications.

Legal Counsel Consultation

The mayor requested of legal counsel to the city whether an outside investigation or an internal investigation should occur in this matter. Counsel advised that the nature of these complaints appeared to be such that an internal investigation conducted by the mayor would be most appropriate.

Process of Investigation

The mayor conducted two one-hour interviews on separate occasions with each of the parties involved in this complaint, the citizen and the city supervisor of the planning department. Each individual was asked to respond to each of the six complaints and to offer evidence in support of their statements and responses. All of this material was captured on interview forms and is part of the back-up material to this executive summary.

Materials Reviewed

Citizen Complaints

Background and Resume of Complainant

Job Description of Planning Director

Food Van Ordinances

Application Form for Food Van Approval

Other Applicable Ordinances

Review of roles of the Planning Advisory Board (PAB) and Design Advisory Board (DRB) in this process.

Interview records from individual interviews.

Findings – Specific to the Complaints Filed

1. The City Planning Dept. did not knowingly and illegally approve a non-compliant application under the Food Vending Ordinance #1009.
2. The Design Review Section of the Planning Code was not required for the food van.
3. The city did not facilitate the continued operation of the business but rather actively pursued alternatives to the problems as they arose in the first few days of operation of the food van.
4. The city was aware of citizen complaints but was not aware of the exact dimensions of the food van in the first few days of operation.
5. When formal written complaints of non-compliance were received on 7-26-15 they were acknowledged and the length of the vehicle was determined to be longer than the 20' length required in the ordinance and prompt action at that point was taken to notify the food van operator to stop business.
6. The food van did go through the application process in place at the time.
7. There was insufficient information requested on the application form used by the city to determine whether the food van complied with the Food Van

- Ordinance in all ten areas of compliance.
8. The operator did have a responsibility to adhere to the requirements of the ordinance in submitting his van for approval. The van did not meet the requirements of the ordinance in terms of its length.
 9. The city council held a special council meeting on July 3, 2015 and granted a stay in the desist business order for the Fourth of July weekend.
 10. The city council in its regularly scheduled meeting on July 6, 2015 amended the ordinance language to remove the length requirement and to authorize a new location for the placement of the van in a previously identified public space.
 11. No days of business were lost due to these actions and no costs were incurred.

Findings – In Terms of General Practice and Process

1. The City Planning Department designed the application form for a food van permit and approved an application for a food van permit with less than complete information and in particular these requirements from ordinance were not met:
 - a. The year, make, model and dimensions of the food van were not included on the application form.
 - b. A photo or drawing of the van showing the business name was not submitted with the application
 - c. The height of the awning on the vehicle was not specified.
 - d. The phone number of the applicant was not included on the application form.
 - e. An e-mail contact for the applicant was not included on the application form.
 - f. A description of the preparation methods and food products to be offered for sale including the menu, display, and distribution containers were not included on the application form.
 - g. There was not an inspection of the truck to insure that required licenses and permits were posted conspicuously.
12. One of the primary responsibilities of the community planning department is to insure compliance with city ordinances, procedures, and to implement best practices in management of the department. These expectations are clearly listed in the posting for the position of Community Planning Director.
13. The application form to operate a food van in the City of Langley could have been more complete. It left out sections that should have asked for specific pieces of information and evidence to verify compliance with 10 listed specifications in the ordinance.
14. Given the precedent setting nature of this being the first food van approved to operate in the City of Langley under ordinance 1009, best practice would have been to include a legal review of the application form for completeness and compliance prior to its use.

15. The City Council has a right to expect, when an ordinance is submitted to them for approval, that it is complete, correct, if appropriate has passed legal review, and has been thoroughly vetted and checked for accuracy and compliance.
16. The city council has a right to expect that any approval of a food van presented would have been thoroughly reviewed for accuracy, compliance, and completeness by the administration prior to their being asked to take action on the matter.
17. The complainant has a background that includes practical knowledge of the function of the community planning department in the City of Langley, history of the city, ordinances with respect to planning, compliance, and the importance of the food van being compliant with the food van ordinance passed by the city.
18. The complainant filed a complaint on June 26, 2015 that included six allegations of concern. Four were compliance matters and two involved opinions about the city and business owner's responsibilities in the matter.
19. A review of each complaint was conducted. Separate interviews on two occasions with the complainant and the community planning director, data gathering, review, including consultation with two previous planning directors for the City of Langley were conducted by the mayor.
20. There were 10 specific areas of compliance required in the ordinance.
21. Of these 10 areas some were determined to be questionable in terms of compliance.
22. The areas of compliance were reasonable expectations that should have been verified prior to recommending of approval of the food van to operate in the city.
23. When the first move of location of the food van was made, it was not made to a previously approved site. The van was moved East on First Street into a space in front of the vacant Dog House historic structure. This move was to move the vehicle from blocking the view over Whale Bell (Hladky Park) and to facilitate power from the Dog House building. The owners of the Dog House agreed to his placement and to provide power at cost to the van owner. This location subsequently was determined to be in violation of a state law by the Chief of Police regarding proximity to a crosswalk and was blocking a stop sign from view. A temporary stop sign was placed in front of the truck on the street side and in line with the existing blocked stop sign. This caused some confusion and, in the complainant's view, provided an unsafe situation.
24. The Design Review Board Process was not specifically required for the food van according to the wording of Food Van Ordinance #1009, however, the Design Review process would have been very helpful in assuring that the food van met the expectations of the community in terms of configuration, signage, paint, and graphics prior to being approved for operation.
25. The attorney for the city maintained that the use of the word "illegal" by the complainant in the complaint did not mean actions or lack of action rose to

- the level of criminal intent, but rather, most appropriately merited an internal investigation conducted by the mayor.
26. There was no intent on the part of the community planning director to do anything illegal or non-compliant in presenting either the food van ordinance or the application for permission to operate a food van in Langley.
 27. The process for implementation of the Food Van Ordinance and approval for the operation of a food van and its location could have been done in a more thorough and compliant manner especially in the specific areas of non-compliance.
 28. The amended ordinance that was approved by the city council in the regular council meeting held on 7-6-15 addressed the majority of concerns expressed in this process and that the current location of the van (adjacent to US Bank in the city loading zone/parking area) is proving to be more acceptable to the community and business owner.
 29. No disciplinary action is merited for the lack of action or actions taken in this process. However, lessons have been learned that should provide for improving the ordinance and application process and for a more thorough review and approval process for future food vans in the city.

Recommendations

1. The Food Van Ordinance should be reviewed internally by the community planning director and additional modifications and revisions suggested by the mayor, city council members, and interested citizens should be considered, and the finalized ordinance revisions should be reviewed by legal council prior to city council approval and adoption of any changes.
2. The application form for Food Van approval to operate in the City of Langley should be revised to include data to be provided addressing all areas of ordinance compliance and pass legal review prior to being used for the next food van applicant.
3. Areas of improvement in terms of process design and approval should be noted to the community planner for the City of Langley.
4. This executive report is to be presented to the City Council on 7-17-15 in their preview materials for the upcoming city council meeting; and be made available on 7-20-15 in the city council meeting.

Note: A binder that includes the raw data, interviews, communications, and back up material for this executive summary resides in the Mayor's Office and may be viewed at City Hall upon submission of a Public Records Disclosure Request.