

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF COMMERCE, CALIFORNIA, REPEALING IN ITS ENTIRETY CHAPTER 5.16 "VENDORS" OF TITLE 5 "BUSINESS REGULATIONS AND LICENSING", AND REPLACING IT WITH CHAPTER 5.16 "SIDEWALK VENDING"; AND AMENDING SECTION 5.05.010, "PERMIT REQUIRED FOR CERTAIN BUSINESSES" OF CHAPTER 5.05, "BUSINESS REGULATIONS"; AND REPEALING IN ITS ENTIRETY CHAPTER 5.17, "ITINERANT VENDORS" OF TITLE 5 "BUSINESS REGULATIONS AND LICENSING" OF THE CITY OF COMMERCE MUNICIPAL CODE

WHEREAS, the City of Commerce ("City") is a general law city, incorporated under the laws of the State of California;

WHEREAS, the City is interested in promoting public health, safety and welfare of City residents on its sidewalks, streets, residential areas and in parks;

WHEREAS, on September 17, 2018, Governor Brown signed Senate Bill ("SB") 946 (Lara), codified at Government Code sections 51036 through 50139, which establishes statewide regulations of vending in the public right-of-ways and parks;

WHEREAS, SB 946 goes into effect January 1, 2019, and a city may not cite, fine or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with SB 946;

WHEREAS, it is foreseeable that commencing January 1, 2019, with the effectiveness of SB 946, the City will see an immediate influx of sidewalk vendors;

WHEREAS, without an established City regulatory scheme that governs sidewalk vendors by January 1, 2019, there is a current and immediate threat to the public health, safety, and welfare of residents of the City caused from unregulated sidewalk vending;

WHEREAS, SB 946 requires local jurisdictions that wish to enforce violations against sidewalk vendors to first adopt rules and regulations consistent with SB 946;

WHEREAS, current City regulations relating to vendors exist in Chapters 5.05 ("Business Regulations"), Chapter 5.16 ("Vendors"), and Chapter 5.17 ("Itinerant Vendors) of Title 5 ("Business Regulations and Licensing") of the Commerce Municipal Code;

WHEREAS, persons violating these provisions are deemed guilty of a misdemeanor;

1 **WHEREAS**, the City Council has an interest in establishing a regulatory and
2 permitting scheme that is consistent with SB 946, but also seeks to control its sidewalks,
3 public rights-of-way, and parks to the fullest extent;

4 **WHEREAS**, the City Council has an interest in reducing the potential danger to the
5 public from exposure to food-borne disease as a result of contamination from improperly
6 packaged and/or stored food products, which may be offered for sale by sidewalk vendors;

7 **WHEREAS**, SB 946 states that Part 7 (commencing with Section 113700) of Division
8 104 of the Health and Safety Code to a sidewalk vendor who sells food remains applicable;

9 **WHEREAS**, regulations are needed to ensure the residents of the City have a simple
10 way to ensure vendors sell food and beverages according to the Los Angeles County
11 Department of Public Health's requirements;

12 **WHEREAS**, regulations are needed to prevent unsanitary conditions and ensure
13 trash and debris are removed by sidewalk vendors;

14 **WHEREAS**, the City Council has an interest in avoiding obstructions of visual lines of
15 sites from city streets and overcrowding of sidewalks and other pedestrian paths;

16 **WHEREAS**, regulations are needed to safe-guard pedestrian movement on
17 sidewalks and other pedestrian paths;

18 **WHEREAS**, regulations are needed to ensure sidewalks do not become overcrowded,
19 forcing pedestrians onto the street and to ensure compliance with the federal Americans with
20 Disabilities Act of 1990;

21 **WHEREAS**, the process of licensing sidewalk vendors protects the public safety by
22 requiring identification and proper licensure by state and county agencies prior to authorizing
23 sidewalk vending activities; and

24 **WHEREAS**, the City Council seeks to further regulate sidewalk vending in the City.

25 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE**
26 **DOES HEREBY ORDAIN AS FOLLOWS:**

27 **SECTION 1:** The City Council hereby finds and determines that the recitals above are
28 true and correct and hereby incorporate into this ordinance as though fully set forth herein.

SECTION 2: That Chapter 5.16, "Vendors" of Title 5, "Business Regulations and Licensing" is hereby repealed in its entirety, and replaced with Chapter 5.16, "Sidewalk Vending" to read as follows:

Chapter 5.16 – SIDEWALK VENDING

5.16.010 - Definitions.

5.16.020 - General Prohibitions.

5.16.030 - Sidewalk Vending Standards.

5.16.040 - Business License and Sidewalk Vendor Permit Requirements.

5.16.050 - Permit Required.

5.16.060 – Permit Application Form and Accompanying Data and Identification.

5.16.070 – Permits – Application Fees.

5.16.080 - Permits: Applications: Investigation.

5.16.090 – Permits and/or Identification cards - Display.

5.16.100 - Compliance with signs on premises.

5.16.110 - Compliance with provisions - Penalty.

5.16.010 - Definitions.

For the purpose of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

(a) *Certified farmers' market* means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agriculture Code and any regulations adopted pursuant to that chapter.

(b) *Director* means the Director of Finance or his or her designated representative.

(c) *Motorized conveyance* shall mean a pushcart, stand, display, pedal driven cart, wagon, showcase, rack, or other conveyance with any form of non-human assisted propulsion.

(d) *Nonmotorized conveyance* shall mean a pushcart, stand, display, pedal driven cart, wagon, showcase, rack, or other nonmotorized conveyance which solely uses human power for movement.

(e) *Owner* means any person who owns, operates, controls, manages, or leases one or more nonmotorized conveyance for the purpose of vending food or merchandise, including the vending of food or merchandise from one's person, and:

1 (1) Conducts, permits or causes the vending of food or merchandise from a
2 nonmotorized conveyance, or from one's person; or,

3 (2) Contracts with persons to vend food or merchandise from a nonmotorized
4 conveyance, including the vending of food or merchandise from one's person.

5 (f) *Roaming Sidewalk Vendor* shall mean a sidewalk vendor who moves from place
6 to place and stops only to complete a transaction.

7 (g) *Sidewalk Vendor* shall be defined in accordance with subsection (a) of
8 Government Code section 51036 and shall mean a person who vends food or merchandise
9 from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other
10 nonmotorized conveyance or from one's person, upon a public sidewalk or other pedestrian
11 path.

12 (h) *Sidewalk Vendor Permit* shall mean the permit issued by the Director to any
13 person operating as a sidewalk vendor for the purpose of vending food or merchandise.
14 Such permit shall also include the inspection of the nonmotorized conveyance. Such permit
15 shall be issued in accordance with this chapter.

16 (i) *Stationary Sidewalk Vendor* shall mean a sidewalk vendor who vends from a fixed
17 location.

18 (j) *Swap meet* means a location operated in accordance with Article 6 (commencing
19 with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and
20 any regulations adopted pursuant to that article.

21 (k) *Vend or vending* means offering food, beverage, or product of any kind for sale
22 from one's person or nonmotorized conveyance, whether moving or standing.

23 **5.16.020 - General Prohibitions.**

24 (a) No person shall offer for the sale any food product which is not packaged at a
25 pre-approved facility, as designated by the Los Angeles County Health Department.

26 (b) No owner or sidewalk vendor shall cause or allow more than two (2) sidewalk
27 vendors to assemble, gather, collect, or otherwise join for any purpose on any sidewalk or
28 other pedestrian path within twenty (20) feet from each other per city block.

1 (c) No person shall engage in vending within three hundred (300) feet of any school
2 property or church.

3 (d) Sidewalk Vendors shall not be located for purposes of offering products for sale
4 in any location:

5 (1) Which creates an unreasonable obstruction to the normal flow of
6 vehicular or pedestrian access;

7 (2) Within ten (10) feet of any intersection, driveway, or building entrance;

8 (3) In any space designed for vehicular travel, parking, stopping, or loading;
9 or

10 (4) Which blocks manholes, utility access, and vents.

11 (e) No person shall vend before 9:00 a.m., or later than 6:00 p.m. during periods of
12 standard time, or later than 8:00 p.m. during periods of day light savings time in areas zoned
13 exclusively for residential (i.e., Low-density Residential ("R-1"), Medium-density Residential
14 ("R-2"), and High-density Residential ("R-3")).

15 (f) No person shall vend as a stationary sidewalk vendor in city areas zoned
16 exclusively for residential (i.e., Low-density Residential ("R-1"), Medium-density Residential
17 ("R-2"), and High-density Residential ("R-3")).

18 (g) No person shall vend as a stationary sidewalk vendor in public parks in which the
19 City has entered into an exclusive agreement for concessions that exclusively permits the
20 sale of food or merchandise by the concessionaire(s). Vending machines installed and
21 operated at public parks pursuant to a City contract are exempted from subsection (g)
22 herein. The City Council may enter into agreement(s) or franchise(s) for the exclusive
23 selling or offering for sale of food or merchandise within any public parks.

24 (h) No person shall engage in the act of sidewalk vending within the immediate
25 vicinity (i.e., 1000 feet) of a permitted certified farmers' market or permitted swap meet
26 during the limited operating hours of that certified farmers' market or swap meet.

27 (i) No person shall engage in the act of sidewalk vending within the immediate
28 vicinity (i.e., 1000 feet) of an area designated for a special event permit pursuant to Division

11, "Temporary Use and Special Event Permits" of Chapter 19.39 of Title 19, "Zoning" of this Code provided that any notice, business interruption mitigation, or other rights provided to affected business or property owner are also provided to sidewalk vendors specifically permitted to operate in the area, if applicable.

(j) No person shall engage in the act of sidewalk vending with a motorized conveyance.

(k) No person shall engage in the act of sidewalk vending while using a portable generator.

(l) No person shall engage in the act of sidewalk vending with a nonmotorized conveyance with dimensions larger than 48 inches in width, and 96 inches in height.

(m) No person shall engage in the act of sidewalk vending other than on the sidewalk portion of the right of way where a sidewalk exists.

(n) No person shall vend under shaded structures, awnings, gazebos, and bandshell in city parks, except as authorized by a franchise.

(o) No person shall take a nonmotorized conveyance off non-concrete surfaces in city parks.

5.16.030 - Sidewalk Vending Standards.

(a) All food displayed, sold, or offered for sale by sidewalk vendors must be in a manner approved for sale in accordance with California Health and Safety Code, Division 104 (Environmental Health), Part 7 (California Retail Food Code).

(b) Each sidewalk vendor shall display in plain view, the Sidewalk Vendor permit, and any permit required by State and County laws (i.e., county Health Department sticker issued in accordance with California Health and Safety Code, Division 104 (Environmental Health), Part 7 (California Retail Food Code)).

(c) The only signs used in conjunction with street vending shall be signs affixed to or painted on the nonmotorized conveyance or its canopy, or on one's person.

(d) A trash receptacle shall be provided in or on the nonmotorized conveyance. The trash receptacle must be large enough to accommodate customer trash without resort to

1 existing trash receptacles located on any block for use by the general public. A sidewalk
2 vendor may not dispose of customer trash in existing trash receptacles on city sidewalks.

3 (e) No noise making devices shall be used in conjunction with sidewalk vending
4 except one bell with maximum diameter of two (2) inches.

5 (f) Sidewalk vendors must remain in compliance with all state, county and local laws.

6 (g) No nonmotorized conveyance may be left on the sidewalk, on public property, or
7 in the public right of way unattended outside of the sidewalk vendor's operating hours.
8 Nonmotorized conveyances may not be chained or fastened to any pole, sign, tree or other
9 object in the public right-of-way or left unattended. Unattended nonmotorized conveyances
10 will be impounded for safekeeping. A fine shall not be imposed for said impoundment. A
11 nonmotorized conveyance shall be retrieved by contacting the Public Works Division.

12 (h) Notwithstanding any specific prohibitions in this subsection, no sidewalk vendor
13 shall place a nonmotorized conveyance where placement endangers the safety of persons
14 or property.

15 **5.16.040 - Business License and Sidewalk Vendor Permit Requirements.**

16 It shall be unlawful for any person to engage in sidewalk vending without first applying
17 for and obtaining a permit from the Director of Finance, or his or her designee, and paying the
18 required license tax to the Director in the manner provided for in this Code.

19 **5.16.050 - Permit Required.**

20 It shall be unlawful for any person to engage in the business of a sidewalk vendor
21 within the City without first applying for and obtaining a permit, and, in addition, paying the
22 required license tax to the Director of Finance. The procurement of such permit in the
23 manner provided in this chapter shall be a condition precedent to the issuance of a license
24 by the Director of Finance. Sidewalk vendors shall obtain permits from the Director of
25 Finance upon completion of an investigation by the City's law enforcement agency, including
26 the Sherriff's Department.

27 **5.16.060 - Permit Application Form and Accompanying Data and Identification.**

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1 Applicants for a permit to engage in the business of a sidewalk vendor shall file with
2 the Director of Finance an application, which shall contain or be accompanied by the
3 following:

4 (a) A full identification of the applicant and all persons to be directly or indirectly
5 interested in the permit, if granted;

6 (b) The residence and business addresses and telephone numbers of the applicant;

7 (c) The exact nature of the proposed business;

8 (d) If an employee or agent, a full identification of the employer or principal;

9 (e) The location or places of transacting business and place of residence for the
10 past two (2) years;

11 (f) Prior convictions of a crime, misdemeanor, or violation of any law, the nature,
12 place, and date of such offense, and the disposition of the same;

13 (g) A photograph of the applicant who will make the actual contacts incidental to the
14 activity of peddling or soliciting, which photograph shall have been taken within sixty (60)
15 days immediately prior to the date of the filing of the application, shall be two (2") inches by
16 two (2") inches in size, and shall show the head and shoulders of the applicant in a clear
17 and distinguishing manner;

18 (h) In the event the proposed activity involves the sale of any food products or
19 substances for human consumption which can be contaminated by handling, a statement by
20 a reputable physician in the County, dated not more than ten (10) days prior to the
21 submission of the application, certifying the applicant to be free of contagious infections and
22 communicable diseases;

23 (i) A statement as to whether any city or licensing authority has ever refused to
24 issue or to renew or has revoked a license for the conduct of the business for which the
25 permit and license are sought, together with an accurate statement of the reasons therefor;
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27
28

1 (j) A receipt from the Director of Finance showing a permit fee payment for the
2 application form to cover the costs of the investigation of the facts to be stated in such
3 application form;

4 (k) Such other information as the City's law enforcement agency may deem
5 reasonably necessary for the protection of the public safety, morals, and general welfare of
6 the community;

7 (l) A valid California Department of Tax and Fee Administration seller's permit to the
8 extent required by law;

9 (m) Additional state licensing from state and local agencies to the extent required by
10 law.

11
12 **5.16.070 – Permits – Application Fees.**

13 The application fees for permits to engage in the business of a sidewalk vendor shall
14 be established by resolution of the City Council.

15 **5.16.080 - Permits: Applications: Investigation.**

16 The general standards set forth in this section relative to the qualifications of every
17 applicant for such permit shall be considered and applied by the City's law enforcement
18 agency to assist the Director of Finance in granting or denying the application. The
19 application shall be of good moral character, and in this connection, the City's law
20 enforcement agency shall ascertain and consider the following:

21 (a) The license history of the applicant and whether such person, in previously
22 operating in the County or another county in the State under a license, has had such license
23 revoked or suspended, the reasons therefor, and the demeanor of the applicant subsequent
24 thereto;

25 (b) Whether the applicant has made a full disclosure of all the matters required to be
26 set forth in the application;

27 (c) Whether the applicant has been in default in the payment of license taxes or any
28 governmental agency;

1 (d) Such other facts relevant to the general personal history of the applicant as the
2 City's law enforcement agency shall find necessary to a fair determination of the eligibility of
3 the applicant; and

4 (e) Whether the granting of the permit will or will not be detrimental to the safety, public
5 morals, or general welfare of the City.

6 **5.16.090 – Permits and/or Identification cards - Display.**

7 Such permit or identification card shall be worn constantly by the permittee on the
8 front of his or her coat or hat in such a way as to be conspicuous during the time the
9 permittee is engaged in the actual activity of vending as a sidewalk vendor.

10 **5.16.100 - Compliance with signs on premises.**

11 It shall be unlawful for any sidewalk vendor, or any person pretending to be a vendor,
12 peddler, for the purpose of vending, peddling or soliciting or pretending to vend, peddle or
13 solicit, to ring the bell or knock at, on, or in any building, or entrance thereto, whereon there
14 is painted, affixed, or otherwise displayed to the public view any visible sign containing any
15 or all of the words "No Peddlers Permitted", "No Solicitors Permitted", "No Agents
16 Permitted", or words which otherwise purport to prohibit or indicate the objection of the
17 occupant to vending, peddling or soliciting on the premises, and it is unlawful for any such
18 peddler to attempt to gain admittance to such premises.

19 **5.16.110 - Compliance with provisions - Penalty.**

20 It shall be unlawful for any person to engage in the operation or business of a
21 sidewalk vendor within the City without first obtaining a permit to do so as provided in this
22 chapter, and with all other requisites, and thereafter exhibiting such permit or identification
23 card, or without complying with the requirements and provisions of this chapter.

24 The penalties set forth herein are specifically applicable to offenses and violations as
25 regulated by this chapter. Accordingly, any person violating any provision of this chapter shall
26 be punished as follows:

27 (a) Vending without a sidewalk vendor permit as required by this chapter shall be
28

punishable by the following:

(1) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation;

(2) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation;

(3) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation;

(b) Except as otherwise provided in subsection (a) herein, any violation of this chapter shall be punishable by the following:

(1) An administrative fine not exceeding one hundred dollars (\$100) for a first violation;

(2) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation;

(3) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(c) The City Council, City Administrator, Director of Finance, or their designee(s) may revoke a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations. The revocation, notice, hearing and appeal procedures set forth in Section 5.05.090 of Chapter 5.05 of Title 5 of this Code shall apply to revoke a permit under this chapter.

(d) Upon proof of a valid sidewalk vendors permit issued by the City, the administrative fines set forth in subsection (a) shall be reduced to the administrative fines set forth in subsection (b) herein.

(e) Failure to pay an administrative fine pursuant to subsections (a) and (b) of Section 5.16.110 shall not be punishable as an infraction or misdemeanor.

(f) When assessing administrative fines pursuant to subsections (a) and (b) of Section 5.16.110, the Director of Finance or his or her designee shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make

1 available instructions for requesting an ability-to-pay determination. If the person meets the
2 criteria described in subdivision (a) or (b) of Government Code section 68632, as
3 determined by the Director of Finance, or his or her designee, the City shall accept, in full
4 satisfaction, twenty percent (20%) of the administrative fine imposed pursuant to subsection
5 (a) of Section 5.16.050 herein. The person may request said ability-to-pay determination at
6 adjudication or while the judgment remains unpaid, including when a case is delinquent or
7 has been referred to a collection program.

8 (g) The Director of Finance, or his or her designee, may allow a person to complete
9 community service in lieu of paying the total administrative fine, may waive the
10 administrative fine, or may offer an alternative disposition for violations of subsection (a) of
11 Section 5.16.110 herein.

12
13 **SECTION 3:** Section 5.05.010, "Permit required for certain businesses" of Chapter
14 5.05 of Title 5 of the Commerce Municipal Code, is amended to read as follows:

15 No person shall operate, and no license shall be issued for, any of the following
16 businesses until a permit has first been obtained therefor upon application in writing for
17 such permit pursuant to this chapter:

- 18 (a) Auctioneer;
- 19 (b) Bowling alley;
- 20 (c) Closing out sale;
- 21 (d) Dances;
- 22 (e) Fireworks;
- 23 (f) Massage parlors;
- 24 (g) Pawnbroker;
- 25 (h) Salvage dealer;
- 26 (i) Secondhand dealer;
- 27 (j) Waste disposal facility;
- 28 (k) Wrecker, auto;
- (l) ~~Itinerant vendor or peddler.~~

29 **SECTION 4:** Chapter 5.17, "Itinerant Vendors" of Title 5, "Business Regulations and
Licensing" is hereby repealed in its entirety.

1 **SECTION 5:** Violations of this Ordinance shall constitute violations of the Commerce
2 Municipal Code, and all penalties and remedies authorized under the Commerce Municipal
3 Code shall apply to violations of the provisions of this Ordinance.
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5 **SECTION 6:** This Ordinance is exempt from the California Environmental Quality Act
6 (“CEQA”), in that this Ordinance does not constitute a “project” under CEQA and is exempt
7 pursuant to CEQA Guidelines section 15378(b)(4), and further there is no likelihood of this
8 Ordinance resulting in a significant negative impact on the environment, and is therefore
9 also exempt from CEQA pursuant to CEQA Guidelines section 15060(c)(2).
10

11 **SECTION 7:** Any provisions of the Commerce Municipal Code or appendices
12 thereto, which are inconsistent with the provisions of this Ordinance are hereby repealed or
13 modified to the extent necessary to affect the provisions of the Ordinance.
14

15 **SECTION 8:** If any section, subsection, sentence, clause, phrase, or portion of this
16 Ordinance is for any reason held to be invalid or unconstitutional by the decision of any
17 court of competent jurisdiction, such decision shall not affect the validity of the remaining
18 portions of this Ordinance. The City Council of the City of Commerce hereby declares that it
19 would have adopted this Ordinance and each section, subsection, sentence, clause, phrase
20 or portion thereof, irrespective of the fact that any one or more sections, subsections,
21 sentences, clauses, phrases or portions may be declared invalid or unconstitutional.
22

23 **SECTION 9:** This Ordinance: (a) is necessary for the immediate preservation of the
24 public health, safety, and welfare; (b) contains findings constituting urgency; (c) is effective
25 immediately upon adoption as provided for in Government Code Section 36937.
26

27 **SECTION 10:** The City Clerk shall certify to the passage of this Ordinance and shall
28 cause the same to be published in the manner prescribed by law.

PASSED, APPROVED AND ADOPTED this 15th day of January, 2019.

CITY OF COMMERCE

ATTEST:

Hugo A. Argumedo, Mayor

Lena Shumway
City Clerk

APPROVED AS TO FORM:

Noel Tapia
City Attorney