

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF COMMERCE, CALIFORNIA, ADDING TO, AND AMENDING OF, PROVISIONS OF CHAPTER 5.16 "SIDEWALK VENDING" OF TITLE 5 "BUSINESS REGULATIONS AND LICENSING" OF THE CITY OF COMMERCE MUNICIPAL CODE, TO PROVIDE ADDITIONAL GUIDELINES CONCERNING REQUIRED FINDINGS TO ISSUE A PERMIT OR RENEWAL THEREOF, THE TERM OF A PERMIT, AND ADDITIONAL GROUNDS TO DENY A PERMIT APPLICATION AND TO REVOKE A CITY-ISSUED PERMIT

WHEREAS, the City of Commerce ("City") is a general law city, incorporated under the laws of the State of California, and has the power to make and enforce within its jurisdictional limits all local, police, sanitary, and other ordinances, resolutions, and regulations not in conflict with general laws of the state;

WHEREAS, on December 18, 2018, the City Council adopted the Sidewalk Vendor Ordinance in response to Senate Bill ("SB") 946, signed by Governor Brown on September 17, 2018, and effective January 1, 2019, which establishes statewide regulations for vending from non-motorized conveyances and one's person on sidewalks and in parks, and prohibits the City from citing, fining, or prosecuting a sidewalk vendor for violation of any rule or regulation that is inconsistent with SB 946;

WHEREAS, the City adopted the Sidewalk Vendor Ordinance, as codified in Chapter 5.16, "Sidewalk Vending" of Title 5 "Business Regulations and Licensing" of the Commerce Municipal Code to establish a regulatory and permitting program that is consistent with SB 946, but also seeks to control its sidewalks and public rights of way to the fullest extent;

WHEREAS, the Sidewalk Vendor Ordinance makes it unlawful for any person to engage in sidewalk vending without first applying for and obtaining a permit from the Director of Finance and, in addition paying the required license tax to the Director of Finance in the manner provided in Chapter 5.16 "Sidewalk Vending" of the City Municipal Code;

WHEREAS, the City Council seeks to amend provisions of Chapter 5.16 "Sidewalk Vending" of the City Municipal Code by revising and adding provisions to provide additional and definite guidelines, especially as it relates to the term of a permit, additional grounds to deny a permit or renewal application, and grounds to revoke a City-issued permit.

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

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

SECTION 2: Section 5.16.085, "Additional Required Findings to Issue or Renew a

1 Permit – Term of Permit – Renewal - Grounds to Deny Application” is hereby **added** to
2 Chapter 5.16, “Sidewalk Vending” of Title 5, “Business Regulations and Licensing” of the
3 Commerce Municipal Code, to read as follows:

4 **5.16.085 – Additional Required Findings to Issue or Renew a Permit – Term of**
5 **Permit – Renewal - Grounds to Deny Application.**

6 (1) Within thirty (30) calendar days of receiving a completed application, the
7 director of finance shall issue a sidewalk vendor permit, with appropriate conditions, as
8 provided for herein, if the director finds all of the following:

9 (a) The conduct of the sidewalk vendor will not unduly interfere with traffic
10 or pedestrian movement, or tend to interfere with or endanger the public peace or
11 rights of nearby tenants to the quiet enjoyment and peaceable enjoyment of their
12 property, or otherwise be detrimental to the public peace, health, safety, or general
13 welfare;

14 (b) The conduct of the sidewalk vendor will not unduly interfere with normal
15 governmental or city operations, threaten to result in damage or detriment to public
16 property, or result in the city incurring costs or expenditures in either money or
17 personnel not reimbursed in advance by the vendor;

18 (c) The conduct of such sidewalk vending activity will not constitute a fire
19 hazard, and all proper safety precautions will be taken;

20 (d) The conduct of such sidewalk vending activity will not require the
21 diversion of law enforcement to properly patrol the area of such activity as to interfere
22 with normal law enforcement protection for other areas of the city;

23 (e) The sidewalk vendor has paid all previous administrative fines,
24 completed all community service, and completed any other alternative disposition
25 associated in any way with a previous violation of this chapter;

26 (f) The sidewalk vendor has not had a permit revoked within the past
27 twelve months;

28 (g) The sidewalk vendor’s application contains all required information;

(h) The sidewalk vendor has not made a materially false, misleading or
fraudulent statement of fact to the city in the application process;

(i) The sidewalk vendor has satisfied all the requirements of this chapter;

(j) The sidewalk vendor has paid all applicable fees as set by city council
resolution;

1 (k) The sidewalk vendor's sidewalk vending receptacle and proposed
2 activities conform to the requirements of this chapter;

3 (l) The sidewalk vendor has adequate insurance to protect the city from
4 liability associated with the sidewalk vendor's activities, as may be determined by the
5 city's risk manager, or designee;

6 (m) The sidewalk vendor, or any other person for whom information is
7 required to be provided pursuant to this chapter, has not within the past three years,
8 been convicted of or pled nolo contendere to any felony or of any misdemeanor crime
9 involving moral turpitude or such crime that is substantially related to the
10 qualifications, functions, or duties of a sidewalk vendor, including, but not limited to,
11 the crimes listed under of the California Penal Code, Part 1, Title 9 Of Crimes Against
12 the Person Involving Sexual Assault, and Crimes Against Public Decency and Good
13 Morals.

14 (2) The director, in granting any permit under this chapter, may also impose such
15 reasonable conditions with respect to the use and scope of such permit as is determined to
16 be necessary to protect the public health, safety and/or welfare, and to implement the intent
17 and purpose of this ordinance.

18 (3) All permits issued under this chapter shall expire twelve (12) months from the
19 date of issuance. A sidewalk vendor permit is non-transferable. Any change in ownership or
20 operation of a sidewalk vendor or sidewalk vending receptacle requires a new permit under
21 this chapter. Only one sidewalk vendor permit may be issued to any single person,
22 company, or entity and the permit shall specify whether the permit is for roaming sidewalk
23 vending or stationary sidewalk vending. No person, company, or entity shall conduct both
24 roaming and stationary sidewalk vending under a permit.

25 (4) The director shall consider and review applications for permit renewals
26 pursuant to the criteria set forth in this section. Failure of a permittee to file an application to
27 renew a permit at least thirty (30) calendar days before the expiration thereof shall require
28 the filing of a new application and the payment of the associated fee.

29 **SECTION 3:** Section 5.16.110 of Chapter 5.16, "Sidewalk Vending" of Title 5,
30 "Business Regulations and Licensing" of the Commerce Municipal Code, is hereby **amended**
31 to read as follows:

32 **5.16.110 - Compliance with provisions – Grounds for Revocation - Penalty.**

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

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

4 (a) Vending without a sidewalk vendor permit as required by this chapter shall be
5 punishable by the following:

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

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

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

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

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

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

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

20 (c) The City Council, City ~~Manager~~ Administrator, Director of Finance, or their
21 designee(s) may revoke a City-issued permit issued to a sidewalk vendor for the term of that
22 permit for any of the following reasons: (i) upon the committing of a fourth violation or
23 subsequent violations of this chapter; (ii) fraud, material misrepresentation or false
24 statement contained in the application for a permit or renewal thereof; (iii) the sidewalk
25 vendor has conducted the vending in a manner that endangers the public health, safety or
26 welfare, or conducts his or her business in such a manner as to constitute a breach of the
27 peace; or (iv) has failed to comply with federal, state or local laws, policies and/or
28 regulations. The revocation, notice, hearing and appeal procedures set forth in Section

1 5.05.090 of Chapter 5.05 of Title 5 of this Code shall apply to revoke a permit under this
2 chapter.

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

6 (e) Failure to pay an administrative fine pursuant to subsections (a) and (b) of Section
7 5.16.110 shall not be punishable as an infraction or misdemeanor.

8 (f) When assessing administrative fines pursuant to subsections (a) and (b) of
9 Section 5.16.110, the Director of Finance or his or her designee shall provide the person
10 with notice of his or her right to request an ability-to-pay determination and shall make
11 available instructions for requesting an ability-to-pay determination. If the person meets the
12 criteria described in subdivision (a) or (b) of Government Code section 68632, as
13 determined by the Director of Finance, or his or her designee, the City shall accept, in full
14 satisfaction, twenty percent (20%) of the administrative fine imposed pursuant to subsection
15 (a) of Section 5.16.050 herein. The person may request said ability-to-pay determination at
16 adjudication or while the judgment remains unpaid, including when a case is delinquent or
17 has been referred to a collection program.

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

22 **SECTION 4:** This Ordinance is exempt from the California Environmental Quality Act
23 ("CEQA"), in that this Ordinance does not constitute a "project" under CEQA and is exempt
24 pursuant to CEQA Guidelines section 15378(b)(4), and further there is no likelihood of this
25 Ordinance resulting in a significant negative impact on the environment, and is therefore
26 also exempt from CEQA pursuant to CEQA Guidelines section 15060(c)(2).

27
28 **SECTION 5:** Any provisions of the Commerce Municipal Code or appendices

1 thereto, which are inconsistent with the provisions of this Ordinance are hereby repealed or
2 modified to the extent necessary to affect the provisions of the Ordinance.
3

4 **SECTION 6:** If any section, subsection, sentence, clause, phrase, or portion of this
5 Ordinance is for any reason held to be invalid or unconstitutional by the decision of any
6 court of competent jurisdiction, such decision shall not affect the validity of the remaining
7 portions of this Ordinance. The City Council of the City of Commerce hereby declares that it
8 would have adopted this Ordinance and each section, subsection, sentence, clause, phrase
9 or portion thereof, irrespective of the fact that any one or more sections, subsections,
10 sentences, clauses, phrases or portions may be declared invalid or unconstitutional.
11

12 **SECTION 7:** The City Clerk shall certify to the passage of this Ordinance and shall
13 cause the same to be published in the manner prescribed by law.
14

15 **PASSED, APPROVED AND ADOPTED** this ____ day of _____, 2020.
16

17 **CITY OF COMMERCE**

18 **ATTEST:**

19 _____
Ivan Altamirano, Mayor

20 _____
Lena Shumway
21 City Clerk

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23 **APPROVED AS TO FORM:**
24
25 _____
26 Noel Tapia
27 City Attorney
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