

ORDINANCE NO. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST CALIFORNIA AMENDING CHAPTER 5.17 OF TITLE 5 OF THE LAKE FOREST MUNICIPAL CODE, RELATING TO SIDEWALK VENDING AND FINDING THE ACTION TO BE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the City of Lake Forest, California (“City”) is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, California Senate Bill 946, also known as the California Safe Sidewalk Vending Act (“SB 946”), which passed into law and became effective on January 1, 2019, decriminalized sidewalk vending and established requirements on cities and counties for the regulation of sidewalk vendors; and

WHEREAS, on March 5, 2019, the City Council adopted Ordinance 313, implementing sidewalk vending regulations in compliance with SB 946; and

WHEREAS, since the adoption of Ordinance 313, the City has attempted to address the objective health, safety, and welfare concerns posed by sidewalk vending carried out in violation of the Lake Forest Municipal Code; and

WHEREAS, pursuant to Cal. Const. Art. XI, Sec. 7 and under the City’s general police powers, the City of Lake Forest (“City”) is empowered and charged with responsibility for the health, safety, and welfare of its citizens; and

WHEREAS, the City Council finds that, unless properly regulated, sidewalk vending poses a unique risk to the health, safety, and welfare of the public, including, but not limited to, impacts to traffic, pedestrian safety, mobility, unsanitary conditions involving food preparation, other safety and environmental hazards, risks to children, and consumer protection; and

WHEREAS, SB 946 allows a local authority to adopt additional requirements regulating the time, place, and manner of sidewalk vending if those regulations are directly related to objective health, safety, and welfare concerns; and

WHEREAS, despite these standards, the City has seen a rise in unpermitted sidewalk vending activities where the vendors set up commercial-style cooking operations at major intersections or in proximity to high-traffic areas and sell food but are unable to meet the health and safety requirements, such as properly heating and cooling food, providing handwashing facilities, washing utensils and equipment, and disposing of used liquids.

WHEREAS, the City Council hereby declares that enacting objective impounding procedures as a regulatory measure for sidewalk vending are necessary to protect the health, safety, and welfare of the public; and

WHEREAS, the impoundment of vendor equipment is neither a punishment of violators of the City's sidewalk vending regulations nor a deterrent for future violators, but rather the application of the well-established "community caretaking function," as first articulated by the United States Supreme Court in *Cady v. Dombrowski* (1973) 413 U.S. 433; and

WHEREAS, law enforcement officers routinely perform community caretaking functions, such as helping stranded motorists, returning lost children to anxious parents, and assisting and protecting citizens in need; and

WHEREAS, the community caretaking function regularly extends to law enforcement removing and impounding vehicles from the road where the driver of the vehicle cannot or will not lawfully operate the vehicle, the vehicle is located in an inappropriate location, and that vehicle poses a risk to public safety; and

WHEREAS, the impoundment of vehicles as part of the community caretaking function does not require obtaining a warrant beforehand, so long as law enforcement has reasonably determined that the vehicle posed a hazard to public safety; and

WHEREAS, the nature of a sidewalk vending operation poses many similar problems as vehicles, as well as posing unique health and safety hazards; and

WHEREAS, the City Council finds that the immediate impoundment of vendor equipment meets the community caretaking exception to requiring a prior warrant as it allows for the reasonable removal of vending equipment that poses a hazard to public safety due to its location or in response to vendors who refuse to comply with the City's sidewalk vending regulations to the detriment of public health, safety, and welfare; and

WHEREAS, this Ordinance provides clear standards in which vending equipment in the public right of way is subject to immediate impoundment as well as procedural safeguards to uphold due process for a warrantless impoundment; and

WHEREAS, this Ordinance balances the City's legitimate interests in preserving public health, safety, and welfare with the private interest in a sidewalk vendor's continued operations;

WHEREAS, private interests are protected by this Ordinance through procedural protections, including the requirement that the City takes steps to locate the owner or operator of the sidewalk vending equipment, the City first issues a verbal warning to sidewalk vendors operating in violation of this Ordinance and allows a reasonable time to comply, and the City provides a sidewalk vendor the option to promptly appeal the impoundment and contest any associated fees; and

WHEREAS, these procedural protections help ensure that impoundment actions are proper while protecting an individual's due process; and

WHEREAS, the City Council finds that the impoundment provisions enacted in this Ordinance do not constitute an infraction, misdemeanor, or other form of citation or penalty; and

WHEREAS, all other legal prerequisites relating to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The City Council hereby finds and determines that the Recitals above are true and correct and incorporated as findings herein.

SECTION 2. CEQA. The City Council determines that adoption of the Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment. (14 Cal. Code Regs., § 15061(b)(3).) The Ordinance does not authorize any development or other activity that could result in a significant effect on the environment. Accordingly, the City Council hereby directs City staff to file a Notice of Exemption within five days of the adoption of this Ordinance.

SECTION 3. Code Amendment. Section 5.17.110, titled "Vending equipment impoundment" is hereby added to Title 5 of the Lake Forest Municipal Code to read as follows:

"5.17.110 Vending Equipment Impoundment

- A. The City may impound a sidewalk vendor's vending cart, food, equipment and any goods therein used in violation of this chapter, pursuant to the provisions of Civil Code Section 2080.10, Health and Safety Code Section 114393, and/or any other applicable City, county, or state law for the following reasons:
1. Food displayed, offered, or made available for sale including equipment, or utensils used by a sidewalk vendor without holding a valid and displayed health permit from the Orange County Health Care Agency's Environmental Health Division in violation of City, county or state law;
 2. Items reasonably appear to be unattended or abandoned on public property for more than thirty 30 consecutive minutes without moving from the exact spot it was located and reasonable attempts were made to locate the owner or responsible person(s) within the first fifty 50 feet of the items;

3. Items displayed, offered, or made available for sale by a sidewalk vendor who does not obtain a sidewalk vending permit from the City Public Works Department as required by Section 5.17.030;
4. Items displayed, offered, or made available for sale by a sidewalk vendor who operates in violation of this chapter, and refuses or fails to provide identification;
5. Operation in violation of this chapter and refusal or failure by a sidewalk vendor to comply within 30 consecutive minutes after being instructed to do so by a City code enforcement officer or other City official;
6. Items displayed, offered, or made available for sale by a sidewalk vendor who vends in a manner that blocks or obstructs the free movement of pedestrians on sidewalks and fails to maintain a minimum of thirty-six inches (36") of accessible path of travel, without obstruction, along the sidewalk upon which the vendor is vending so as to enable persons to freely pass while walking, running, or using mobility assistance devices and/or in violation of the Federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards;
7. Items displayed, offered, or made available for sale in violation of any applicable federal, state, county, or City laws, ordinances, and regulations, including but not limited to illegal or counterfeit merchandise, alcohol, tobacco, cannabis, smoke or vaping products, adult-oriented material, live animals, weapons, and/or pharmaceuticals;
8. Items creating an imminent and substantial danger or environmental hazard to the health, safety, or general welfare of the public or property at the location of the vending cart such as, but not limited to, discharge of oil, grease or other slippery substances on the street or sidewalk without any effort to maintain best management practices; using unapproved portable cooking equipment, heating element, gas-fueled appliance, generator, or any open flame; attaching or using any water lines, electrical lines, or gas lines during vending operations; during an urgent or emergency public safety event or incident; lack of a fire extinguisher; using any luminaire, flashing lights or any other animated devices or sign; or using, operating or permitting any radio, loudspeaker or other machine or device for the producing or reproducing of sound; or

9. Items impounded as evidence of a crime or booked as property after an arrest of any sidewalk vendor involving any City, county, state or federal law or regulation excluding Chapter 5.17. Such items shall be stored and released in accordance with the procedures set forth in the California Penal Code and any other applicable state law.
- B. Prior to commencing an impoundment action under the preceding paragraph A, a City code enforcement officer or other City official will issue a verbal warning to the sidewalk vendor operating in violation of this chapter. An impoundment action will proceed only if the sidewalk vendor fails or refuses to comply with the verbal warning within the time specified or, if no time is specified, within a reasonable time.
 - C. The City may immediately dispose of impounded items that are perishable and/or cannot be safely stored.
 - D. Sidewalk vending items or equipment impounded pursuant to this section, excluding those items that were immediately disposed of according to 5.17.110(C), shall be held by the City for not less than 30 nor more than 60 days from the date of impoundment.
 - E. The City shall provide the person from whom the vending items or equipment were impounded with a receipt and instructions for retrieval of the impounded items, excluding those items that were immediately disposed of according to 5.17.110(C). The receipt and instructions shall be given to the person from whom the items were taken at the time of impound or shall be mailed within two business days of the impound to the address received by the City when the person applied for a sidewalk vending permit.
 - F. Impounded vending equipment and goods, excluding any items that were disposed of according to 5.17.110(B), will be released to the sidewalk vendor or owner provided that proper proof of ownership is presented, and the City receives payment in full of all administrative costs incurred as a result of the violation. Any unclaimed items will be considered abandoned and forfeited to the City after 60 days following impoundment. Pursuant to state law, the City shall not be liable for damages caused by any official action performed with due care regarding the disposition of items pursuant to this section and the disposal provisions of this chapter.

- G. An aggrieved sidewalk vendor may, within 21 calendar days of the impoundment, appeal the impoundment of their items by requesting an administrative hearing before a hearing officer in accordance with 5.17.090 and, if successful in their appeal, may have their items returned, excluding any items that were immediately disposed of according to 5.17.110(C), and shall not be required to pay the impound fee(s). If the sidewalk vendor is successful on appeal, any appeal fee paid by the sidewalk vendor shall be refunded.
- H. A sidewalk vendor may recover impounded items or equipment, excluding any items immediately disposed of according to 5.17.110(C), upon paying applicable impound fees and demonstrating proper proof of ownership of the items.
- I. The City Council may adopt by ordinance or resolution impound fees, which shall reflect the City's personnel, enforcement, investigation, storage, disposal, and impound costs.
- J. The City Manager is authorized to develop additional regulations for the storage and release of impounded items not in conflict with this chapter.

SECTION 4. Effective Date. This Ordinance takes effect 30 days after its adoption.

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

SECTION 6. Certification. The City Clerk shall certify as to the passage, and adoption of this Ordinance and shall cause the same, or a summary thereof, to be published and/or posted in the manner required by law.

SECTION 7. Record of Proceedings. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at Lake Forest City Hall, 100 Civic Center Drive, Lake Forest, California 92630. The City Clerk is the custodian of the record of proceedings.

PASSED, APPROVED, AND ADOPTED this XXth day of _____, 2024.

MARK TETTEMER
MAYOR

ATTEST:

LISA BERGLUND, MPA
CITY CLERK

APPROVED AS TO FORM:

MATTHEW E. RICHARDSON
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF LAKE FOREST)

I, Lisa Berglund, City Clerk of the City of Lake Forest, do hereby certify that the foregoing Ordinance No. _____ was duly introduced and placed upon its first reading at a regular meeting of the City Council on the ___ day of _____, 2024, and thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ___ day of _____ 2024, by the following vote, to wit:

- AYES: COUNCIL MEMBERS
- NOES: COUNCIL MEMBERS
- ABSENT: COUNCIL MEMBERS
- ABSTAIN: COUNCIL MEMBERS

LISA BERGLUND, MPA
CITY CLERK