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**SUBJECT:** Second reading of two ordinances to regulate non-motorized sidewalk vending along public sidewalks and mobile vending from motorized vehicles on public and private property and declaring the ordinances exempt from CEQA.

**DEPARTMENT:** Community Development

**STAFF:** Alexis Morris, Director of Community Development

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### **TITLE/RECOMMENDATION**

Staff recommends that the City Council waive the second reading and adopt the following:

- 1) Ordinance No. 1069 of the City Council of the City of Brentwood, Amending the Definition of "Peddler" in Section 5.48.020 and Adding Chapter 5.64 to the Brentwood Municipal Code; Imposing Regulations on Sidewalk Vending in Compliance With Senate Bill 946; Amending Section 7.02.210 Regarding Vendors in Parks; and Determining the Ordinance to be Exempt from CEQA.
  
- 2) Ordinance 1070 of the City Council of the City of Brentwood Repealing and Replacing Chapter 5.68 of the Brentwood Municipal Code Regarding Mobile Vending and Declaring the Ordinance to be Exempt from CEQA.

The two Ordinances are exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as they are not a "project" and have no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. 14 Cal. Code Regs. § 15378(a). Further, the Ordinances are exempt from CEQA as there is no possibility that either Ordinance or their implementation would have a significant negative effect on the environment. 14 Cal. Code Regs. § 15061(b)(3).

### **FISCAL IMPACT**

Any fees for permits or revenue from business license tax certificates would be included in the General Fund. The new fees for permits would be submitted for approval by the City Council at a future meeting when considering updating the City's 2023/24 Cost Allocation Plan to add the new fees. Business license tax and fees are



already included in the City's FY2023/24 Cost Allocation Plan. The amount of revenue collected will depend on the fee amount proposed and the volume of sidewalk vending and mobile vending activity, but is not expected to have a material impact on overall General Fund revenues.

Any revenue generated by administrative citations for enforcement of the proposed Ordinances would be included in the General Fund.

## **BACKGROUND**

### **SIDEWALK VENDING**

Senate Bill (SB) 946, also known as the Safe Sidewalk Vending Act, was signed into law on September 17, 2018 by Governor Jerry Brown and was effective on January 1, 2019. SB 946 adds [Chapter 6.2 \(commencing with Section 51036\) to Part 1 of Division 1 of Title 5 of the California Government Code](#) to regulate sidewalk vendors throughout the State. Specifically, SB 946 prohibits California cities and counties from banning sidewalk vendors from operating on public sidewalks. SB 946 also prohibits cities from regulating sidewalk vendors unless cities establish a permitting system that is consistent with the provisions of SB 946. SB 946 also requires that any restrictions placed on sidewalk vendors be directly related to objective health, safety, or welfare concerns. Community animus or economic competition does not constitute an objective health, safety, or welfare concern according to the statute. Local jurisdictions that wish to regulate sidewalk vending are required to first adopt a program with regulations consistent with SB 946.

[SB 972](#) was signed into law on September 23, 2022 by Governor Gavin Newsom and became effective on January 1, 2023. SB 972 amended the California Retail Food Code. It added a new definition of a "compact mobile food operation" under the definition of a "mobile food facility" to address sidewalk vendors who prepare food using a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance. SB 946 did not affect the applicability of the California Retail Food Code as to sidewalk vendors who sell food. The California Retail Food Code allowed criminal penalties for violations. However, SB 972 de-criminalized the California Retail Food Code.

The effect of these bills is that SB 946 and Senate Bill 972 have fully decriminalized sidewalk vending and only administrative citations are now allowed.

### **MOBILE VENDING FROM MOTORIZED VEHICLES**

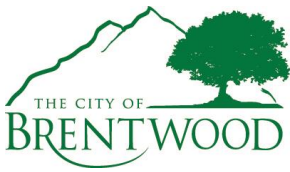


[California Vehicle Code Section 22455](#) allows cities to adopt ordinances adopting time, place, and manner restrictions that are required for public safety regarding vending from vehicles upon any street. [California Health and Safety Code Section 114315](#) provides cities similar authority to enact time, place, and manner restrictions for public safety. The California Constitution also endows cities with police powers to promote the public health, safety, and general welfare of its citizens, which applies to mobile vending on both public and private property and concerning the sale of food, goods, and/or services.

### **SIDEWALK VENDING ORDINANCE**

The ordinance is compliant with SB 946 and SB 972 and proposes several time, place, and manner restrictions. Below are some, but not all, of the new regulations.

- Requiring maintenance of sanitary conditions in compliance with Contra Costa County health requirements, and obtaining any applicable County permits to sell food;
- Complying with disability access standards;
- Obtaining a permit from the City and paying the appropriate permit fee, obtaining a business tax certificate, and requiring proof of a valid California seller's permit for sales tax compliance;
- Obtaining liability insurance of no less than \$1 Million;
- Requiring an acknowledgment that a sidewalk vendor uses public property at their own risk;
- Requiring compliance with other generally applicable federal, state, county, and local laws;
- Requiring the provision of information on proposed vendor operations;
- Prohibiting sidewalk vending within a certain radius of certain parks, farmer's markets, swap meets, and temporary special events;
- Prohibiting stationary vendors in residential areas and placing hours of operation restrictions on roaming and stationary vendors;
- Imposing distance restrictions from certain locations and other sidewalk vendors;
- Prohibiting vending of alcohol, cannabis, adult-oriented material, tobacco products, products that contain nicotine, any product or device used to smoke/vape nicotine or cannabis, fireworks, or any weapons (including knives, air soft guns, pellet guns, paintball guns, or anything that may resemble a gun); and
- Establishing administrative fines for violations.



**MOBILE VENDING FROM MOTORIZED VEHICLES ORDINANCE**

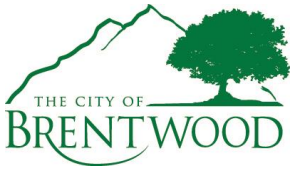
The proposed Mobile Vending from Motorized Vehicles Ordinance (attached) includes more precise definitions, new regulations for hours of operation and requires a new type of permit from the City in addition to a business tax certificate. Below are some, but not all, of the updated regulations.

- Obtaining a health permit from Contra Costa County, if applicable;
- Obtaining a permit from the City as well as a business tax certificate from the City, and payment of all applicable fees;
- Identification documentation requirements;
- Location and siting requirements, including distance from certain locations and other mobile vendors, and time restrictions;
- Placing hours of operation restrictions;
- Obtaining liability insurance in the amount of \$1 Million;
- Requiring compliance with the City's sign regulations and noise level regulations;
- Prohibiting vending of alcohol, cannabis, adult-oriented material, tobacco products, products that contain nicotine, any product or device used to smoke/vape nicotine or cannabis, fireworks, or any weapons (including knives, air soft guns, pellet guns, paintball guns, or anything that may resemble a gun);
- Establishing violations of the ordinance as a misdemeanor; and
- Adds a definition for a long-term mobile vending facility, which would need to comply with requirements contained in Title 17 (Zoning) of the Brentwood Municipal Code.

**CITY COUNCIL MEETING OF FEBRUARY 27, 2024**

On February 27, 2024, the City Council considered the proposed ordinances. After deliberation, the City Council, with a vote of 5-0, introduced and waived the first reading of Ordinance 1069. The City Council, with a vote of 5-0, introduced and waived first reading of Ordinance 1070 and provided the following direction to staff:

- Return with a detailed staff report on regulations for long-term mobile vending facilities as part of the focused zoning or ordinance update
- Future staff report adding 5.68.050 M with the 4 day regulation and removing it from the draft Ordinance.
- Discuss fees that would be a part of the permit for Council to further discuss and make a determination about
- Provide information on a potential grant program for the fees



### **CITY COUNCIL STRATEGIC INITIATIVE**

Not applicable.

### **PREVIOUS ACTION**

Previous action by the City Council is included as Attachment 1.

### **DATE OF NOTICE**

Not Applicable.

### **ENVIRONMENTAL DETERMINATION**

The two Ordinances are exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as they are not a "project" and have no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. 14 Cal. Code Regs. § 15378(a). Further, the Ordinances are exempt from CEQA as there is no possibility that either Ordinances or their implementation would have a significant negative effect on the environment. 14 Cal. Code Regs. § 15061(b)(3). The City Clerk shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

### **ALTERNATIVE OPTION(S)**

1. Do not adopt Ordinances No. 1069 and No. 1070.
2. Modify one or both of the Ordinances based on legally defensible findings, waive the first reading of any such modified Ordinance, and calendar a date for second reading at a future City Council meeting.
3. Continue the item with direction for staff to return with additional information.

### **ATTACHMENT(S)**

1. Previous Action
2. City Council Ordinance No. 1069
3. City Council Ordinance No. 1070