

ORDINANCE NO. 1069

AN ORDINANCE 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

WHEREAS, the City of Brentwood, California ("City") is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the police powers delegated to it by the California Constitution, the City has the authority to enact laws which promote the public health, safety, and general welfare of its citizens, including sidewalk vending, as long as these are consistent with SB 946; and

WHEREAS, in 2018, the California Legislature passed SB 946 which prohibits cities from regulating sidewalk vendors, except in accordance with the provisions of SB 946; and

WHEREAS, SB 946 authorizes the implementation of regulations that are directly related to objective health, safety, or welfare concerns, and that do not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified; and

WHEREAS, the permit requirements proposed are consistent with SB 946, as they are reasonable, related to objective health, safety, and welfare concerns, and are based upon compliance with other generally applicable laws including the Americans with Disabilities Act and the City's general encroachment permit requirements for work and/or activities in the public right of way; and

WHEREAS, the standards imposed on stationary sidewalk vendors requiring a minimum path of accessible travel are necessary to comply with the Americans with Disabilities Act and maintain minimum safe access along public sidewalks; and

WHEREAS, standards for maintaining access to building entrances, and not blocking driveways, fire hydrants, parking areas and building storefront windows are necessary to guard the health and safety of patrons, drivers, vendors and existing business owners and promote fire suppression and law enforcement practices that allow the City's safety personnel to observe activities within buildings and maintain access; and

WHEREAS, the City Council finds and determines that the installation, repair, maintenance, and removal of encroachments in the rights-of-way must be regulated

in order to protect the public health, safety, and welfare and to provide for the orderly administration and maintenance of the public rights-of-way for the benefit of the community, while at the same time allowing reasonable accommodation and cooperative flexibility for providing necessary utility and other convenience services to the community; and

WHEREAS, the City Council finds that public and private persons who maintain and/or install encroachments in the public way bear a responsibility to help preserve the right-of-way and to contribute to the administrative and liability costs incurred by the community and caused by such encroachments; 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, risks to children, and consumer protection; and

WHEREAS, the inherent nature of sidewalk vending and the ability of such vendors to be located on private property and public streets and move quickly from place to place in the community, including near parks, schools, and other places frequented by children, warrants imposing certain regulatory measures, including requiring background checks, to protect the health, safety, and welfare of the community; and

WHEREAS, SB 946 continues to authorize cities to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by a city; and

WHEREAS, fraud or misrepresentation in the course of vending constitutes an objective harm to the health, safety, and welfare of the City's residents; and

WHEREAS, fraud or misrepresentation in the application for the permit constitutes an objective harm to health, safety, and welfare of the City's residents; and

WHEREAS, vending in a manner that creates a public nuisance or constitutes a danger to the public constitutes an objective harm to the health, safety, and welfare of the City's residents.

NOW, THEREFORE, the City Council of the City of Brentwood does ordain as follows:

SECTION 1. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Ordinance as if fully set forth herein.

SECTION 2. The definition of "peddler" in Section 5.48.020 of the Brentwood Municipal Code is amended as follows (new language in underline):

“Peddler” means a person who goes uninvited from door to door, or place to place, to sell, offer or solicit anything or service, whether for present or future delivery. “Peddler” includes, but is not limited to, a hawker, itinerant merchant without a fixed place of business in the city, or solicitor proposing orders for future delivery or future service. A “peddler” shall not mean a sidewalk vendor as defined in Section 5.64.020 of the Brentwood Municipal Code.”

SECTION 3. Chapter 5.64 is hereby added the Brentwood Municipal Code to read as follows:

Chapter 5.64 – Sidewalk Vending

5.64.010 Purpose.

5.64.020 Definitions.

5.64.030 Permit Required.

5.64.040 Review of Permit Application; Decision.

5.64.050 Permit Expiration and Renewal.

5.64.060 Permit Rescission.

5.64.070 Appeals.

5.64.080 Permits Nontransferable.

5.64.090 Permits Temporary.

5.64.100 Areas Where Vending Prohibited.

5.64.110 Restrictions on Sidewalk Vendors in Certain Areas.

5.64.120 Operating Requirements.

5.64.130 Violations – Penalties.

CHAPTER 5.64 SIDEWALK VENDING

5.64.010 PURPOSE.

The City finds that the vending of prepared or pre-packaged foods, goods and/or wares at semi-permanent locations on public sidewalks and rights-of-way may pose unsafe conditions and special dangers to the public health, safety, and welfare of residents and visitors. The purpose of this Chapter is to implement regulations on both roaming and stationary sidewalk vending that protect the public health, safety, and welfare of the community while complying with the requirements of state law, as amended from time to time, to promote safe vending practices, prevent safety,

traffic, and health hazards, and preserve the public peace, safety, and welfare of the community.

5.64.020 DEFINITIONS.

The following words and phrases, whenever used in this Chapter, shall mean as follows:

"Adult oriented material" means any book, magazine, photograph, drawing, sculpture, audio/visual representation or other merchandise which is characterized by exposure of specified anatomical areas or sexual activities.

"Applicant" means any person who is applying for a sidewalk vendor permit pursuant to this Chapter.

"Cart" means any pushcart, pedal-driven cart, wagon, bicycle, tricycle, display, rack, showcase, stand, table, display, or other non-motorized conveyance (not a vehicle as defined in the California Vehicle Code), other wheeled container or mechanism or from one's person, and includes a stationary cart or a roaming cart.

"California Retail Food Code" means Part 7 of Division 104 of the California Health and Safety Code (commencing at Section 113700).

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

"City" means the City of Brentwood.

"City Manager" means the City manager of the City of Brentwood, or their designee.

"County" means Contra Costa County.

"Director" means the Finance Director of the City of Brentwood, or their designee.

"Food" means any type of edible substance or beverage.

"Goods" or "merchandise" means any items and products of every kind and description, including all food, produce, and beverage items.

"Health Department" means Contra Costa County Environmental Health or other division within Contra Costa County regulating the vending of food.

"Health Department Permit" means any and all licenses, permits, certifications, and courses required and issued by the Health Department to vend food within the City in accordance with this Chapter.

"Person" shall mean one (1) or more natural persons, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies,

partnerships, entities, associations, clubs, or organizations composed of two (2) or more individuals (or the manager, lessee, agent, servant, officer, or employee of any of them), whether engaged in business, non-profit, or any other activity.

"Roaming sidewalk vendor or vending" has the same meaning as set forth in Government Code section 51036(b), and includes a sidewalk vendor who moves from place to place and stops only to complete a transaction.

"Rules and regulations" means the rules and regulations, if any, established and adopted by City Council resolution, concerning the sidewalk vending program that are intended to clarify and aid in the administration and enforcement of this Chapter.

"Sidewalk" means any paved surface in the public right-of-way provided for the use of pedestrians and includes pedestrian paths, parkways, public sidewalks, or other interests therein owned, held, leased, operated or otherwise controlled by the City.

"Sidewalk vendor" has the same meaning as set forth in Government Code section 51036 (b), and includes a person who vends, offers to sell, operates, engages in, or carries on a food or goods/merchandise vending business from a pushcart, stand, display, pedal driven cart, wagon, showcase, rack or other nonmotorized conveyance (that is not a vehicle as defined in the California Vehicle Code), or from one's person, upon a public sidewalk, pedestrian path or other public right-of-way available to pedestrians.

"Sidewalk vending permit" means a permit issued by the City to vend food, goods or merchandise within the City in accordance with this Chapter.

"State seller's permit" means a permit issued by the California Department of Tax and Fee Administration.

"Stationary sidewalk vendor or vending" means a sidewalk vendor who vends from a fixed location.

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

"Temporary special permit" means an event authorized by a permit issued by the City for the temporary use of, or encroachment on, the sidewalk or any other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts.

"Vend" or "vending" means to sell, offer for sale, display for sale, or solicit offers to purchase food, food products, beverages, goods, or merchandise.

5.64.030 PERMIT REQUIRED.

A. No person, either for themselves or any other person, shall conduct or engage in sidewalk vending within the City without first obtaining a sidewalk vending permit pursuant to this Chapter, unless otherwise approved as part of a Special Event Permit (BMC 7.02.020) issued by the City of Brentwood.

B. Prior to operating, a sidewalk vendor shall submit a sidewalk vending permit application to the City's Finance Department. To apply for a sidewalk vending permit, a person must file an application with the Director, or his or her designee, accompanied by a non-refundable application fee in an amount established by resolution of the City Council. The application shall be in a form prescribed by the Director and shall contain, at a minimum, the following:

1. Valid identification, such as a State of California driver's license or identification number, an individual taxpayer identification number, Social Security number, or any other government-issued identification card.

2. The full legal name, address and telephone number (business and residential) of the sidewalk vendor.

3. Applicant's height, weight, and color of eyes and hair;

4. One (1) photograph of the applicant at least two (2") inches by two (2") inches taken within four (4) months preceding the date of the application;

5. If the applicant is an agent of an individual, company, partnership, corporation, or other entity, the name and business address of the principal.

6. The name and contact information of all persons that will be employed as roaming sidewalk vendors or utilizing a cart for sidewalk vending.

7. Whether the Sidewalk vendor intends to operate a Stationary vending cart, a Roaming vending cart, or some other kind of display.

8. Proposed location of operation. An application for placement of a Stationary vending cart in a non-residential area of the City must contain the proposed location, marked by major cross streets, a photo or sketch of such location on a 8 inch by 11 inch sheet of paper, and the hours per day and the days per week during which the stationary sidewalk vendor proposes to operate at the location(s) or area(s).

9. The type of food, goods and/or merchandise the Sidewalk vendor will vend. If the sidewalk vendor is selling merchandise, a description of the merchandise to be sold. If the sidewalk vendor is selling food, a description of the food to be sold.

10. The dimensions of the vending cart, not to exceed fifteen (15) square feet, and also not exceed a linear distance greater than five (5') feet, on any one side. Merchandise such as banners, flags, and pennants must be displayed directly on the cart and may not extend above or beyond the cart. An umbrella not exceeding six (6') feet in diameter may be attached to the cart. Include a photo of the vending cart and any signs that will be affixed to the vending cart;

11. Proof of a valid City business tax certificate submitted application. A City Business Tax Certificate shall be issued at the time the sidewalk vending permit is approved. While both the sidewalk vending permit application and business tax certificate application shall be submitted concurrently, the City shall not process payment for the business tax certificate application unless the sidewalk vending permit application is approved.

12. Proof of liability insurance, to be kept in force during the term of the permit, for public liability and bodily injury, issued by a California admitted insurance carrier or an insurance carrier with an A.M. Best rating of A-VII or better. The insurance policy shall be endorsed to state that coverage may not be suspended, voided, canceled or reduced in coverage or limits without thirty (30) days' prior written notice to the City. The insurance policy shall insure the sidewalk vendor and shall name the City and its officers, agents, volunteers and employees as additional insureds against loss by reason of injury or damage that may result to persons or property from the negligent operation or defective construction of the Cart, or from violation of this Chapter or of any other law of the state or the United States. The insurance policy shall be in the sum in an amount not less than \$1 million.

13. An acknowledgment that the sidewalk vendor will obtain and maintain any insurance required by this Chapter and/or the Director throughout the duration of any permit issued under this Chapter;

14. The application or renewal fee, which shall be non-refundable.

15. Proof of a valid California Department of Tax and Fee Administration seller's permit and additional licenses from state or local agencies to the extent required pursuant to Revenue and Taxation Code Section 6067.

16. Proof of a valid Contra Costa County Health Department Permit for food-related vending, if applicable, except when the sidewalk vending consists solely of twenty-five (25) square feet or less of display area from which only prepackaged non-potentially hazardous food and whole uncooked produce will be sold. If potentially hazardous food or cooked produce will be sold or the food or the display area is greater than twenty-five (25) square feet, the vendor must provide a copy of the County Health Department issued to the vendor. Proof of any other County Health Department requirement for food-related vending, as such requirements may be amended from time to time.

17. Proof of a valid certificate of completion of a food handler course, if applicable.

18. A list of all convictions for any felony or misdemeanor (exclusive of any violations not constituting a felony), the nature of the offense, and the place, date, and disposition of the charge, including the penalty assessed.

19. An affidavit signed by the applicant attesting that the information provided in the application is true and correct and that the applicant has not been found guilty or pled no contest to any of the following within five years prior to the date of the application: any crime involving driving under the influence of alcohol or other controlled substance; any crime involving reckless driving; any offense resulting in the suspension of a driver's license; a criminal assault; any child annoyance or sex-related crime; any drug-related misdemeanor or felony; the sale, distribution or display of obscene material; or indecent exposure.

20. A statement as to whether or not the applicant has ever had any license or permit issued by any agency or board, city, county or state revoked or suspended, or has had any professional or vocational license or permit revoked or suspended, and the reason(s) for the revocation(s).

21. A statement as to the number of carts to be used.

22. Certification by the applicant under penalty of perjury that the information contained in the application is true to his or her knowledge and belief;

23. If a vendor of food or food products, proof of all required approvals from the Contra Costa County Health Department;

24. An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, State, and Federal laws;

25. Any additional licenses from other State or local agencies to the extent required by law;

26. An acknowledgment that use of public property is at the sidewalk vendor's own risk, the City does not take any steps to ensure public property is safe or conducive to the sidewalk vending activities, and the sidewalk vendor uses public property at their own risk;

27. Any other relevant information required by the Director; and

28. Any other reasonable information regarding the time, place, and manner of the proposed vending.

29. For a Stationary vendor, an encroachment permit pursuant to Chapter 12.08 of the Brentwood Municipal Code.

5.64.040 REVIEW OF PERMIT APPLICATION; DECISION.

A. The Director, or his or her designee, shall approve the issuance of a permit unless he or she determines that:

1. Information contained in the application, or supplemental information requested from the applicant, is materially false, misleading, or fraudulent;
2. The applicant has failed to provide a complete application, after having been notified of the requirement to produce additional information or documents;
3. The applicant has failed to demonstrate an ability to conform to the prohibitions, restrictions, and operating standards set forth in Sections 5.64.100, 5.64.110, and 5.64.120 of this Chapter;
4. The applicant has failed to pay any previous administrative citations, fines, complete any community service, and/or complete any other alternative disposition associated with a previous violation of this chapter; or
5. Within three (3) years of the date of the application, the applicant has either been convicted of a felony or misdemeanor involving moral turpitude, the applicant has been convicted in a court of competent jurisdiction or pled nolo contendere to any felony offense involving the sale of a controlled substance specified in California Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058, or, at the time of application, the applicant is on probation or parole for any offenses set forth in this section for an offense that was committed within three (3) years of the date of the application.

B. If the permit is denied, written notice of such denial and the reasons therefor shall be provided to the applicant by mail, postage prepaid, at his or her last known address within seven (7) calendar days.

C. Exemptions. A sidewalk vending permit shall not be required for the following activities:

1. The sale of agriculture products on the site where the product is grown.
2. Catering for private parties held exclusively on private property and not open to the general public.
3. Events permitted pursuant to a lawfully issued temporary event permit including but not limited to a Certified Farmers' Market, Swap Meet, street fairs, outdoor concerts, sport league opening day, and business sidewalk sales.
4. First Amendment protected vending.

5.64.050 PERMIT EXPIRATION AND RENEWAL.

A sidewalk vending permit shall be valid for a calendar year: twelve (12) months, or fraction thereof, from the date of issuance. The business tax certificate shall coincide and expire concurrently with the sidewalk vending permit and both become null and void if the vendor fails to renew each year. Renewal forms will be mailed to the address provided by the applicant prior to the expiration of his or her active sidewalk vending permit. The annual permit is not subject to proration.

5.64.060 PERMIT RESCISSION.

A. The Director may suspend or rescind a permit issued to a sidewalk vendor for a third violation or subsequent violation of this Chapter, at his or discretion, for any of the following reasons:

1. Fraud or misrepresentation in the course of vending;
2. Fraud or misrepresentation in the application for the permit;
3. Vending in a manner that creates a public nuisance or constitutes a danger to the public.

B. Notice of the suspension or rescission of a permit issued to a sidewalk vendor under this Chapter shall be mailed, postage prepaid, to the holder of the sidewalk vendor permit at his or her last known address.

C. A sidewalk vendor whose permit is rescinded may apply for a new sidewalk vending permit upon the expiration of the term of the rescinded permit.

5.64.070 APPEALS.

In the event that any applicant or permittee desires to appeal from any order, rescission, or other ruling of the Director made under the provisions of this Chapter, such applicant or any other person aggrieved shall have the right to appeal such action or decision to the City Manager within fifteen (15) days after the notice of the action or decision has been mailed to the person's address as shown on the permit application. An appeal shall be taken by filing with the City Clerk a written appeal statement setting forth the grounds for the appeal, along with the City's appeal fee, which shall be established by City Council resolution. The filing of the appeal shall stay the enforcement of any decision suspending or rescinding the permit. The Director shall transmit the written statement to the City Manager within ten (10) days of its filing and payment of the appeal fee, and the City Manager shall set a time and place for a hearing on appeal. A hearing shall be set not later than sixty (60) days from the date of filing of the applicant's written appeal statement with the City Clerk. Notice of the time and place of the hearing shall be given to the appellant in the same manner as provided for the mailing of notice of suspension or rescission at least seven (7) days prior to the date set for the hearing. At the hearing, the appellant and the City shall be entitled to legal representation and may present relevant evidence, testify under oath, and call witnesses who shall testify

under oath. The City Manager, or designee, shall not be bound by the traditional rules of evidence in a hearing, except that hearsay evidence may not be the sole basis for the decision of the City Manager or designee. The City Manager, or designee, may continue the hearing as deemed necessary. The decision of the City Manager, or designee, on the appeal shall be final and binding on all parties concerned.

5.64.080 PERMITS NONTRANSFERABLE.

No permit granted pursuant to this Chapter shall be transferable. Any change in ownership or operation of a sidewalk vendor or vending cart requires a new permit under this Chapter.

5.64.090 PERMITS TEMPORARY.

Permits shall be considered temporary and non-permanent in nature and permittees shall have neither property interest in, nor any entitlement to, the granting or continuation of any such permit.

5.64.100 AREAS WHERE VENDING PROHIBITED.

A. Vending Prohibited in Certain Parks. Stationary sidewalk vendors are prohibited from vending in parks where the city has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire. Stationary sidewalk vendors and roaming sidewalk vendors may vend in parks that do not have signed agreements for exclusive food or merchandise concessionaires if they comply with all the requirements of this Chapter.

B. Vending Prohibited Near Farmers' Markets. Sidewalk vendors are prohibited within three hundred (300) feet of a permitted certified farmers' market during the limited operating hours of that certified farmers' market. 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 Agricultural Code, as may be amended, and any regulations adopted pursuant to that chapter.

C. Vending Prohibited Near Swap Meets. Sidewalk vendors are prohibited within three hundred (300) feet of a permitted swap meet during the limited operating hours of that swap meet. A "swap meet" means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, as may be amended, and any regulations adopted pursuant to that article.

D. Vending Prohibited Near Temporary Special Events. Sidewalk vendors are prohibited within three hundred (300) feet of an area designated for a temporary special event for the limited duration of the temporary special event permit.

A "temporary special event" is a special event authorized by a special event permit issued by the City of Brentwood, for the temporary use of, or encroachment on, the

sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, temporary event permit, contract, license agreement, temporary use permit, or any similar approval for purposes including, but not limited to, filming, parades, sporting events, festivals, carnivals, or outdoor concerts.

5.64.110 RESTRICTIONS ON SIDEWALK VENDORS IN CERTAIN AREAS.

A. Stationary sidewalk vendors are prohibited in areas that are zoned exclusively for residential use. This prohibition does not extend to roaming sidewalk vendors.

B. Sidewalk vending is prohibited in areas with no sidewalks or with narrow sidewalks where the sidewalk vendor's operation cannot still leave a minimum of forty-eight inches (48") of accessible path of travel, without obstruction, along the public sidewalk or public pathway.

5.64.120 OPERATING REQUIREMENTS.

A. No sidewalk vendor shall vend in any of the following locations:

1. Areas where vending is specifically prohibited in accordance with section 5.64.110.
2. Within three hundred (300) feet of:
 - a. A permitted certified farmers' market during the operating hours of the farmers' market and for one (1) hour before and one (1) hour after such operating hours.
 - b. A permitted swap meet during the operating hours of the swap meet and for one (1) hour before and one (1) hour after such operating hours.
 - c. An area designated for a temporary special permit during the duration of the approved temporary special event permit and for one (1) hour before and one (1) hour after such operating hours.
3. Within one hundred (100) feet of:
 - a. A police officer, firefighter, lifeguard, or emergency service personnel who are actively performing their duties or providing services to the public.
 - b. A freeway on ramp or a freeway off ramp.
4. Within twenty-five (25) feet of:
 - a. A street corner, controlled intersection, marked crosswalk, or the curb return of any unmarked crosswalk.

- b. A traffic signal, traffic signal controller, or other emergency facility.
 - c. A fire hydrant or fire call box.
 - d. A curb that has been painted white, yellow, green, blue, or red.
 - e. A bus stop, bus shelter, or bus bench.
 - f. The entrance, exit, or emergency exit to a building, structure, or facility.
 - g. Trash receptacle, bike rack, public restroom, park benches/tables, benches in the downtown area, or similar public use items.
 - h. An automated teller machine.
 - i. An outdoor dining area.
 - j. Another sidewalk vendor.
 - k. Any pedestrian or vehicular entrance to any school facility.
5. Within ten (10) feet of:
- a. A driveway, driveway apron, or alley approach.
 - b. A utility meter, manhole, service box, tree well, streetlight pole, power pole, telecommunications pole, or other utility.

B. Sidewalk vending shall be limited to the following hours:

- 1. In residential areas (zoned exclusively for residential use), sidewalk vending shall be permitted between 9:00 a.m. and 9:00 p.m.
- 2. In nonresidential areas, sidewalk vending shall be permitted between 8:00 a.m. and 10:00 p.m. but these hours shall not be more restrictive than the hours of operation of other businesses or uses on the same street.

C. No sidewalk vendor shall vend in a manner that blocks or impedes the free movement of pedestrians or vehicles. Sidewalk vendors must at all times provide a clearance of not less than four (4) feet on all sidewalks or pedestrian areas so as to enable persons to freely pass while walking, running, or using mobility assistance devices and to comply with the Americans with Disabilities Act of 1990 (Public Law 101336) and any other disability access standards.

D. All food and goods/merchandise shall be stored either inside or affixed to a sidewalk vending cart or carried by the sidewalk vendor. Food and merchandise shall not be stored, placed, or kept on public property. Food and merchandise

cannot be displayed on the ground, or on public use items such as benches anywhere including the downtown area, tables, and/or park benches. If affixed to the sidewalk vendor cart, the overall space taken up by the sidewalk vendor cart shall not exceed fifteen (15) square feet, and also not exceed a linear distance greater than five (5') feet, on any one side. Merchandise such as banners, flags, and pennants must be displayed directly on the cart and may not extend above or beyond the cart. An umbrella not exceeding six (6') feet in diameter may be attached to the cart.

E. Sidewalk vendors shall provide a trash receptacle for customers in or on their sidewalk vending cart and shall ensure proper disposal of customer trash. Prior to leaving any vending location, the sidewalk vendor shall pick up, remove, and dispose of all trash or refuse generated by the vending operations or the vendor's customers within a fifteen (15) foot radius of the vending location.

F. Sidewalk vendors shall immediately clean up any food, grease, or other fluid or item related to sidewalk vending activities that falls on public property.

G. Sidewalk vendors of food or food products shall possess and display in plain view on the vending cart a valid public health permit from the Contra Costa County Department of Environmental Health and operate in accordance with such permit.

H. Sidewalk vendors shall possess and display in plain view on the vending cart or on the sidewalk vendor's person at all times while vending a valid permit issued pursuant to this Chapter, as well as any other permit or license required by the City and any other appropriate governmental agency.

I. All signage and advertising related to the sidewalk vendor shall be attached to the sidewalk vending cart or the sidewalk vendor's person. No signs or displays may be placed on public property.

J. Sidewalk vendors shall possess at all times while vending, current liability insurance in accordance with section 5.64.030.

K. Sidewalk vendors shall comply with all applicable Federal, State, county, and local laws, including without limitation State food preparation, handling, and labeling requirements; fire codes and regulations; noise standards; alcoholic beverages, tobacco products, cannabis, electronic cigarettes, smoking devices and controlled substances regulations; sanitation and health standards set forth in this Division; and the Americans with Disabilities Act of 1990 and other disability access standards (both State and Federal).

L. All sidewalk vendors shall allow a police officer, firefighter, fire prevention specialist, code enforcement officer, health inspector, or other government official charged with enforcing laws related to the sidewalk vendor's activities, at any time, to inspect their sidewalk vending cart.

M. Vending carts shall not be chained, fastened, or affixed at any time to any building or structure, including, but not limited to, lampposts, parking meters,

traffic signals, fire hydrants, benches, bus shelters, trash cans, street signs, trees, or other objects within the public right-of-way. No vending cart shall become a permanent fixture on the vending site or be considered an improvement to real property.

N. Vending carts shall not be left unattended or stored on public property or within the public right-of-way. Vending carts shall be removed from public property when not in active use by a sidewalk vendor.

O. Carts must be self-contained, including any power, fuel, cooling, cooking, shading and heating equipment. Carts shall not contain or use explosive or hazardous materials with the exception of propane.

P. Sidewalk vendors may not attach or use water lines, electrical lines, or gas lines while vending. Sidewalk vendors may not use an electrical outlet owned by the City or any other person. Sidewalk vendors may not run power cords or extension cords across the sidewalk or other public right-of-way.

Q. Sidewalk vendors may not place any type of fencing or other dividers around the vending cart.

R. Sidewalk vendors shall not vend 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).

S. Sidewalk vendors shall not vend live animals, wildlife, fish, fowl, or insects.

T. Sidewalk vendors shall not vend to customers in vehicles.

U. Sidewalk vendors may not rent merchandise or vend services.

V. Vending carts may not be placed on and sidewalk vendors may not stand on areas improved with lawns, flowers, shrubs, street trees, or other landscaping.

W. No sidewalk vendor or cart may use a device that produces a loud noise, nor may the vendor use a loud speaker, public address system, radio, sound amplifier or similar device.

X. Roaming vendors vending in residential areas shall move continuously, except when conducting a sale, which must last no more than fifteen (15) minutes. In no event shall a roaming vendor conduct its operations in a residential area in such a manner to constitute operating in a fixed location.

Y. Stationary sidewalk vendors who operate after daylight hours shall provide adequate lighting that may be necessary to ensure customer safety. Lighting shall be directed downwards and away from adjacent properties.

Z. Sidewalk vendors may not vend out of a parked vehicle.

5.64.130 VIOLATIONS – PENALTIES.

A. A violation of this Chapter by a sidewalk vendor who has a valid sidewalk vending permit from the City is punishable only by an administrative fine in amounts not to exceed the following:

1. One Hundred Dollars (\$100.00) for the first violation.
2. Two Hundred Dollars (\$200.00) for a second violation within one (1) year of the first violation.
3. Five Hundred Dollars (\$500.00) for each additional violation within one (1) year of the first violation.
4. The City may rescind a permit issued to a sidewalk vendor upon the fourth or any subsequent violation.

B. A person engaged in sidewalk vending without a valid City sidewalk vending permit is punishable by an administrative fine in amounts not to exceed the following, in lieu of the amounts set forth in subsection (a) of this Section:

1. Two Hundred Fifty Dollars (\$250.00) for the first violation.
2. Five Hundred Dollars (\$500.00) for a second violation within one (1) year of the first violation.
3. One Thousand Dollars (\$1,000.00) for each additional violation within one (1) year of the first violation.
4. Upon proof of a valid sidewalk vending permit issued by the City, the administrative fines set forth in this subsection shall be reduced to amounts set forth in subsection (a) of this Section.

C. A violation of this Chapter shall not be punishable as an infraction or misdemeanor. No person alleged to have violated the provisions herein shall be subject to arrest except when otherwise permitted by law.

D. Failure to pay an administrative citation issued pursuant to this section shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized herein shall not be assessed.

E. When assessing administrative citations pursuant to this Section, the hearing officer shall take into consideration the person's ability to pay the fine. The City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including

when a case is delinquent or has been referred to a comprehensive collection program.

1. If the person meets the criteria described in subdivision (a) or (b) of Government Code Section 68632, the City shall accept, in full satisfaction, twenty percent (20%) of an administrative citation imposed pursuant to this Chapter.

2. The City may allow a person to complete community service in lieu of paying the total administrative citation, may waive the administrative citation, or may offer an alternative disposition.

F. A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under SB 946 had SB 946 been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

G. Nothing contained herein shall be construed to impede the City's or County's ability to enforce County Health Department codes and regulations."

SECTION 4. Section 7.02.210 of the Brentwood Municipal Code is hereby amended to add subparagraph (C), to state in full as follows:

"Sidewalk vendors as defined in Section 5.64.020 do not need to comply with this Section 7.02.210 but shall comply with the requirements of Chapter 5.64 of this Municipal Code."

SECTION 5. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council of the City of Brentwood hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 6. This Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. 14 Cal. Code Regs. § 15378(a). Further, this Ordinance is exempt from CEQA as there is no possibility that this Ordinance or its 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.

SECTION 7. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 8. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Brentwood held on the 27th day of February, 2024, and passed and adopted at a regular meeting thereof held on the 12th day of March, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Joel Bryant, Mayor

ATTEST:

Margaret Wimberly, City Clerk