

SUBJECT: Two ordinances to regulate non-motorized sidewalk vending and mobile vending from motorized vehicles on public and private property, and direction to staff regarding new regulations in the Zoning Ordinance for longer-term mobile vending facilities.

DEPARTMENT: Community Development

STAFF: Alexis Morris, Director of Community Development

PREPARED BY: Robbie Portillo-Bienemann, Code Enforcement Supervisor
Albert Maldonado, Best Best and Krieger LLP(Legal Consultant)

TITLE/RECOMMENDATION

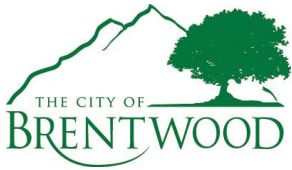
Introduce, read by title only, and waive further reading of:

1) 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.

2) An Ordinance 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 has 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).

In addition, the City Council is asked to provide direction to staff regarding whether to create new regulations in the Zoning Ordinance (Title 17) for longer-term mobile vending facilities as part of the focused Zoning Ordinance update already underway.



FISCAL IMPACT

If the Ordinances changes are approved, any fees for permits or revenue from business license tax certificates would be included in the General Fund. If approved, 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.

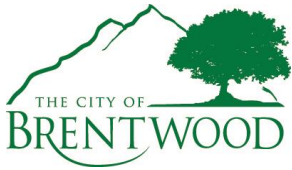
Any revenue generated by administrative citations for enforcement of the proposed Ordinances would be included in the General Fund.

BACKGROUND

SIDEWALK VENDING

California state legislation defines "sidewalk vendor" as a person who sells food or merchandise on a public sidewalk or other pedestrian path (including public parks). Those considered "sidewalk vendors" can operate from a pushcart, wagon, or other non-motorized conveyance or from his or her person, while on the public sidewalk or walk path. A "sidewalk vendor" may be roaming from place to place or stationary operating from a fixed location.

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.



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While SB 946 places many restrictions on the City, the intent behind the bill was to promote entrepreneurship and economic development opportunities for low-income and immigrant communities.

[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.

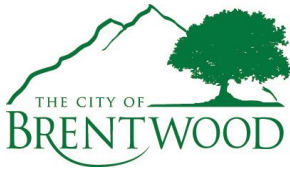
MOBILE VENDING FROM MOTORIZED VEHICLES

Mobile vending means the selling, advertising, promoting, offering, or soliciting to sell, convey, barter, or trade food, products, goods, merchandise, and/or services from a mobile food facility or mobile vending facility. Mobile vending may be conducted from a “Mobile food facility” which means any vehicle used in conjunction with a commissary. “Mobile vending facility” means both a “mobile food facility” and any vehicle used in conjunction with mobile vending. The term is further defined as any motor vehicle or device, including, but not limited to, cars, trucks, and vans, or any vehicle or device that is pushed, pulled, carried, towed or otherwise transported by a motor vehicle or device and equipped to store, prepare, serve, advertise, promote, offer, convey, barter, trade, solicit and/or sell food, foodstuffs, food products, and all associated wares, goods, and merchandise.

[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.

ANALYSIS

Staff is proposing two new ordinances regulating sidewalk vending and mobile vending from motorized vehicles in order to comply with new State laws and to adopt



new standards to protect public health and safety. The proposed ordinances allow these types of businesses to operate in the City, but create robust new standards that are clearer and easier to understand for both residents and businesses and are more enforceable.

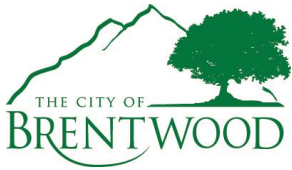
Proposed Sidewalk Vending Ordinance

The proposed 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 current Mobile Vending Ordinance ([Mobile Vending--BMC 5.68](#)) (attached) has not been revised since 1996 and has become outdated relative to state law and the types of mobile vending that are most prevalent in Brentwood. The current ordinance is lacking precise definitions of the different types of mobile vendors, is inconsistent



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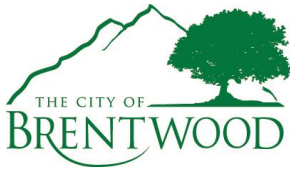
with the State's new sidewalk vending regulations, does not specify hours of operation in residential zones, does not address special events, and does not address vending of prohibited materials (e.g. drug paraphernalia or fireworks). Staff is recommending to repeal and replace the current ordinance in its entirety due to the number of changes proposed.

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.

Time Limits

Mobile vending facilities are moveable, located outside, and must be moved to a commissary at night. They may be temporary uses, or, if they comply with the requirements of Title 17 (Zoning) of the Brentwood Municipal Code, may operate as a long-term mobile vending facility. Section 5.68.050(M), Operating Regulations, stipulates that, except for long-term mobile vending facilities, mobile vending shall not occur on the same private property more than a cumulative four (4) days within a thirty-day period. Title 17 (Zoning) of the Brentwood Municipal Code shall govern the term allowed for a long-term mobile vending facility.



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There may be circumstances where mobile vending facilities could operate for a longer period of time or on a semi-permanent basis; could potentially include during a restaurant remodel or as part of a new development project that includes an on-site commissary.

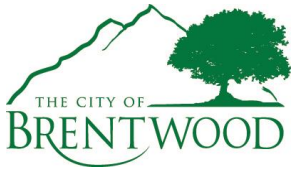
Staff requests that the City Council provide direction regarding whether to create new regulations in the Zoning Ordinance (Title 17) for longer-term mobile vending facilities as part of the focused Zoning Ordinance update already underway. Title 17 is a more appropriate place for regulating more permanent land uses than Title 5, which regulates the licensing and taxing of businesses in the city, not land use requirements related to those businesses. In the event that the Council directs staff to add regulations to Title 17, the attached ordinance includes a definition for "long term mobile vending facility" (Section 5.68.020(J)) that are allowed by the underlying zoning district and exempts them from the cumulative four day limit (Section 5.68.050(M)). This ensures that any future regulations will not conflict with the attached Ordinance. If the Council is not interested in allowing longer-term mobile vending facilities, then Council could direct staff to delete references to long term mobile vending facilities from the attached ordinance.

Effective Date

As described below, staff is conducting extensive public outreach for the February 27 City Council hearing and will conduct additional outreach to mobile vendors if the ordinance is adopted by the City Council. The attached Mobile Vending Ordinance includes an effective date of June 1, 2024. If adopted, the ordinance's later effective date will allow staff ample time to conduct outreach to the effected businesses and allow those businesses additional time to prepare for obtaining a permit from the City.

COMMUNITY OUTREACH

Prior to the City Council meeting, a notification letter was mailed and emailed to 59 businesses that City staff identified as Mobile Vendors with either an active City of Brentwood Business Tax Certificate, or individuals who expressed interest in obtaining information regarding upcoming revisions. The letter included details regarding the proposed municipal code revisions, the date/time of the City Council meeting, information about when/where the agenda with the draft ordinances would be available, as well as information pertaining to submitting public comments. The letter was also shared with the Downtown Brentwood Coalition, the Chamber of Commerce, and the Foodie Crew, as they provide mobile food vendor event planning services.



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If the City Council adopts the two new ordinances, Community Development staff will conduct further outreach to the businesses impacted by the new regulations. This will include making contact with businesses directly, social media posts, and advertisements in local publications. A Mobile Vending brochure will be circulated during the outreach. More detailed information regarding how to obtain a Mobile Vending or Sidewalk Vending permit with a link to the applications will also be available on the City’s website. Community Development staff will continue to collaborate with other departments involved with both Mobile Vendors and Sidewalk Vendors, including Finance, Police and Parks & Recreation.

In addition, a handout has been created for Sidewalk Vending that can be utilized by staff from other departments that will be interacting with sidewalk vendors to provide direction regarding the requirements for a Sidewalk Vending permit (e.g. Police Department and Parks & Recreation in conjunction with special events or when located within the parks).

ENFORCEMENT

SB 946 and SB 972 have fully decriminalized sidewalk vending, therefore only administrative citations are allowed. Enforcement of both ordinances would be conducted primarily by the Community Enrichment division after community outreach and education efforts related to the new regulations. The Police Department may issue warnings and assist with educating sidewalk vendors but would be focused on enforcement only for the most imminent hazards to public safety.

PUBLIC COMMENT

Prior to the City Council meeting, the City Council received one comment from Rocio Parra and Victoreano Varela regarding operating a catering trailer. The comment is attached for City Council reference.

CITY COUNCIL STRATEGIC INITIATIVE

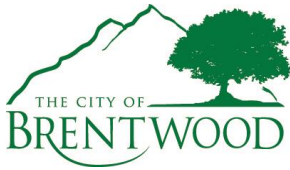
Not applicable.

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 approve staff's recommendation.
2. Modify staff's recommendation based on legally defensible findings.
3. Continue the item with direction for staff to return with additional information.

ATTACHMENT(S)

1. Previous Action
2. Current Mobile Vending Ordinance --BMC 5.68
3. Sidewalk Vending Ordinance
4. Mobile Vending Ordinance
5. January 26, 2024 Public Comment