

**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 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 mobile vending on both public and private property; and

**WHEREAS**, the City may regulate mobile food facilities operating in the right-of-way, pursuant to Vehicle Code section 22455 and Health and Safety Code section 114315; and

**WHEREAS**, vehicles that produce, prepare, cook, and carry food, foodstuffs, food products, and all associated wares and merchandise for purposes of sale on the public streets pose special danger to the public health, safety, and welfare of children and residents in the City; and

**WHEREAS**, the sale of food, foodstuffs, food products, and all associated wares and merchandise on public streets from vehicles can cause dangerous conditions on the City's roads and streets through the congregation of large crowds and imposition of the flow of traffic on the public right-of-way; and

**WHEREAS**, the City has the authority to regulate the type of vending, and the time, place, and manner of vending from vehicles upon the street in order to promote public safety.

**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**SECTION 2.** Chapter 5.68 of the Brentwood Municipal Code is hereby repealed and replaced in its entirety as follows:

**"Chapter 5.68 – MOBILE VENDING.**

**5.68.010 Purpose.**

**5.68.020 Definitions.**

**5.68.030 Permits Required.**

**5.68.040 Identification Card/Decal Required.**

**5.68.050 Location and Siting Requirements.**

**5.68.060 Operating Regulations.**

**5.68.070 Suspension; Rescission.**

**5.68.080 Appeals to City Manager.**

**5.68.090 Violations; Penalties.**

**Section 5.68.010 Purpose.**

This Chapter establishes requirements for the vending of food and goods in the public right-of-way and on private property, including but not limited to city facilities and parking lots, to prevent traffic, safety, and health hazards. The primary purpose of the public streets, sidewalks, parking lots, and other public ways is for use by vehicular and pedestrian traffic. Regulating mobile vending will protect the public health and safety and ensure safe pedestrian and vehicular traffic. Unregulated vending in the public right-of-way, from any vehicles including mobile food vehicles or food trucks contributes to traffic congestion and can impede the orderly movement of pedestrians and vehicles. The unregulated use of congested streets and sidewalks with a high concentration of vehicular, pedestrian and commercial activity by mobile food vendors can make the streets and walkways unsafe for motorists, cyclists, pedestrians, and mobile food vendors themselves.

**Section 5.68.020 Definitions.**

For purposes of this Chapter, the following definitions apply:

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

B. "City" means the City of Brentwood.

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

D. "Compact mobile food operation" means a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

E. "Commissary" means a food facility that services mobile food facilities, mobile support units, or vending machines where any of the following occur: (1) food, containers, or supplies are stored; (2) food is prepared or prepackaged for sale or service at other locations; (3) utensils are cleaned; or (4) liquid and solid wastes are disposed, or potable water is obtained.

F. "County" means the County of Contra Costa.

G. "Department" means the Finance Department of the City of Brentwood.

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

I. "Food" means and refers to any substance as defined by California Health and Safety Code Section 113781, as a raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part for human consumption, and chewing gum.

J. "Long-term mobile vending facility" means a mobile vending facility that operates on a long-term, not short-term, basis, that is allowed by the underlying non-residential zoning district, is an ancillary use to a primary use on the property, and complies with all the requirements contained in Title 17 (Zoning) of the Brentwood Municipal Code.

K. "Mobile food facility" means any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. "Mobile food facility" does not include a "transporter" used to transport packaged food from a food facility, or other approved source to the consumer. It means 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.

L. "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.

M. "Mobile vending facility" means both a "mobile food facility" and any vehicle used in conjunction with mobile vending.

N. "Mobile vendor" means and refers to any individual or person (natural and corporate) that operates or assists in the operation of a mobile food facility or mobile vending facility.

O. "Mobile vendor permit" means a permit issued by the City to a mobile vendor pursuant to this Chapter.

P. "Permittee" means a person who has been issued a mobile vendor permit pursuant to this Chapter.

Q. "Person" means an individual, firm, partnership, corporation, company, association, or other legal entity and includes a trustee, receiver, assignor or similar representative of any of them.

### **Section 5.68.030 Permits Required.**

A. It shall be unlawful for any person to maintain, manage, or operate a mobile vending facility within the City unless such activity is maintained, managed, or operated in strict compliance with all applicable city, county, state, and federal laws, rules, and regulations, including but not limited to the requirements of Title 17 (Zoning) of the Brentwood Municipal Code if applicable.

B. Prior to operating, a mobile vendor shall obtain the following:

1. a mobile food facility permit issued by Contra Costa County, if applicable; and
2. a business tax certificate issued pursuant to Chapter 5.04 of this Code; and
3. a mobile vendor permit issued by the City pursuant to this Chapter.

C. The mobile vendor permit application shall be approved or conditionally approved by the Director provided all the following criteria, in addition to any others which may be imposed by the City, have been met:

1. Accurate completion of the application, including submittal of all required information or supporting documentation, including, but not limited to, a currently valid driver's license for operation of the mobile vending facility;
2. Payment of all applicable fees, which shall be non-refundable;
3. 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; and
4. Mobile vendors shall maintain, at all times during which the mobile vending facility is in operation, a policy of \$1 million general comprehensive liability insurance as approved by the City and insuring against injury or death of a person and for claims of property damage resulting from the applicant's use of the public right-of-way. The City and its officials, officers, employees and agents shall be named as additional insureds under such insurance policy. Submission and approval of such insurance shall be a condition precedent to approval and issuance of any permit. In addition, the mobile vendor shall indemnify, defend and hold

the City and its officials, officers, employees and agents harmless from any claims arising out of or related to the vendor's ownership, operation, or use of its mobile vending facility, except as otherwise permitted by applicable law.

5. Confirmation of compliance with all conditions and requirements of this Chapter.

D. The mobile vendor permit application may be denied (initially or upon application for a renewed permit) for any of the following reasons:

1. Failure to submit a complete application with full application fee;
2. Fraud or misrepresentation made in the application or in the course of operating a mobile vending facility;
3. Conviction or plea of no contest in the previous five years of a crime as listed in subsection (C)(3) of this Section;
4. Violation of this Chapter or the terms of the mobile vendor permit;
5. In the case of an application for a long-term mobile vending facility, and only if required by the requirements of Title 17 (Zoning) of the Brentwood Municipal Code to obtain a mobile vendor permit application, the use is not allowed in the underlying zoning district and/or is not an ancillary use on the property.

E. Except in cases of a long-term mobile vending facility, the term of each mobile vendor permit, unless sooner terminated, suspended or revoked, shall be valid for a calendar year: twelve (12) months, or fraction thereof, from the date of issuance. Upon the expiration of such term, and consistent with the other provisions of this Chapter, the holder of such mobile vendor permit may renew the mobile vendor permit for one additional one-year term by submitting a new application, together with any fees that may be required, and by complying with all other terms of this article. All mobile vendor permits issued pursuant to this Section shall expire and have no further force and effect upon the date specified in the permit.

F. A separate health permit and/or mobile vendor permit shall be obtained for each mobile vending facility even when conducted under the same ownership. A City business tax certificate shall be obtained prior to operating a mobile vending facility; a single business tax certificate may be obtained for multiple mobile vending facilities if they report gross receipts on one set of books.

G. Any business tax certificate and/or mobile vendor permit issued pursuant to this Chapter shall be personal and shall not be assigned, transferred, sold or otherwise conveyed by the person to whom such permit has been issued to any other person; any such attempted assignment, transfer or conveyance shall immediately render such permit void.

H. Each mobile vending facility shall at all times have permanently affixed to the vehicle in a manner designated by the City and any other local regulatory agency evidence of a current and valid mobile vendor permit issued by the City and evidence of a current and valid Contra Costa County mobile food facility permit, when applicable.

**Section 5.68.040 Location and Siting Requirements.**

A. Generally

All mobile vending facilities shall be located so as not to impede safe movement of vehicular, bicycle or pedestrian traffic, and to maintain a clear line of sight for vehicles, bicycles and pedestrians. No mobile vending facilities shall be located so as to obstruct access to or circulation through any parking lot, or to obstruct access to any public sidewalk or alley.

B. Private Property

1. A mobile vending facility may only operate on private property so long as it is an ancillary use to a permitted use in the zone where the mobile vending is conducted.
2. A mobile vending facility operating on private property shall first obtain written permission from the property owner.
3. A mobile vending facility shall be parked in a parking space on a paved surface outside any designated fire lane and outside any parking or loading space that is required for the principal use on the property. Operating on dirt lots is prohibited.
4. Mobile vending operations shall not reduce the available parking on the property below the minimum number of parking spaces required to serve the existing use(s) on the lot.
5. A total of one (1) mobile vending facilities may be located on a single private property without the need for a Temporary Use Permit issued by the City pursuant to Chapter 17.850 of the Brentwood Municipal Code. A Temporary Use Permit shall be required whenever two (2) or more mobile vending facilities are proposed to be on a single private property.

C. Public Right of Way

1. Mobile vending in the public right-of-way is permitted only as set forth in this Section.
2. A mobile vending facility in operation shall be located as follows:

- a. A minimum of twenty-five (25) feet from any street intersection controlled by a traffic light, crosswalk, or stop sign.
  - b. A minimum of twenty-five (25) feet from any bus stop.
  - c. A minimum of twenty-five (25) feet from any pedestrian or vehicular entrance to any school facility. The twenty-five (25) feet distance shall be measured from the property line of the school which is closest to the mobile vending facility. This prohibition may be waived for special events for which the City issues a Special Event Permit and/or Temporary Use Permit, or by written permission of the school district or any other entity which operates the applicable school.
  - d. Any other reasonable locational requirements deemed necessary by the City in order to protect the public health and safety.
3. A mobile vending facility operating in the public right-of-way shall, at all times, operate in compliance with the California Vehicle Code, Title 10 (Vehicles and Traffic) of the Brentwood Municipal Code, and all posted parking, stopping, and standing restrictions.
  4. When parked along a sidewalk, a mobile vending facility may only serve customers from the adjacent sidewalk or the side of the vehicle closest to the curb and shall not serve customers from the side of the vehicle closest to the motorized travel lanes of the street.
  5. A mobile vending facility that operates in the public right-of-way may not stop or park at a location on the street for any longer than allowed by parking restrictions on the street, but in any event may not operate the mobile vending facility for longer than two (2) hours, and shall not return to the same location within two (2) hours unless approved as part of a Special Event Permit and/or Temporary Use Permit.

### **Section 5.68.050 Operating Regulations.**

To operate lawfully within the City, every mobile vendor must comply with the following standards:

- A. Mobile vending facilities shall not connect to temporary or permanent on-site water, gas, electricity, telephone, cable sources, or other utilities.

B. Mobile vending facilities shall not stand or park in the public right-of-way as follows:

1. For residential zones, between the hours of 9:00 pm and 6:00 am.
2. For non-residential zones, between the hours of 12:00 am and 6:00 am.

C. Tables, chairs, free-standing umbrellas, and shade structures are prohibited on streets, parking spaces, and on sidewalks.

D. Outside of hours of active operations, mobile vending facilities shall be removed from the operating site, whether on private property or in the public right-of-way. Mobile vending facilities shall not be parked overnight at the location of operation nor at a residential property. A mobile food facility must be stored at an approved commissary in accordance with the required permit from Contra Costa County.

E. Mobile vendors shall not use any noise amplification or external speakers. Any mobile food facility shall be subject to the requirements of Chapter 9.32 (Noise Regulations) of the Brentwood Municipal Code.

F. Any signage advertising, displaying, or promoting the products and/or services of a mobile vending facility must be permanently attached to or painted on the mobile vending facility. All such signs shall be subject to the provisions of Chapter 17.640 (Sign Ordinance) of the Brentwood Municipal Code. No signs or banners that are separate from the mobile vending facility shall be placed at the operating site or within the public right-of-way.

G. Mobile vendors are prohibited from littering and discharging waste into storm drains. The mobile vendor must remove litter caused by its products from any public and private property within a twenty-five (25) foot radius of the mobile vending facility's location. All mobile vendors shall provide separate and clearly marked receptacles for trash, recycling, organic waste, and/or compost, according to the collection services available, at the operating site. Mobile vendors shall properly dispose of all trash, recycling, organic waste, and/or compost generated by their operations daily.

H. Mobile vending facilities must have current and valid vehicle registration clearly marked on their vehicle license plates while vending.

I. Mobile vendors must display a valid mobile vendor permit and business tax certificate issued by the City within the vehicle used for vending.

J. Mobile vendors shall maintain, at all times during which the mobile vending facility is in operation, a policy of \$1 million general comprehensive liability insurance as approved by the City and insuring against injury or death of a person and for claims of property damage resulting from the applicant's use of the public

right-of-way. The City and its officials, officers, employees and agents shall be named as additional insureds under such insurance policy. Submission and approval of such insurance shall be a condition precedent to approval and issuance of any permit. In addition, the mobile vendor shall indemnify, defend and hold the City and its officials, officers, employees and agents harmless from any claims arising out of or related to the vendor's ownership, operation, or use of its mobile vending facility, except as otherwise permitted by applicable law.

K. All food products sold, distributed, conveyed, traded, or provided from the mobile vending facility shall comply with all applicable food labeling requirements established by the State of California.

L. Mobile 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).

M. 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.

#### **Section 5.68.060 Suspension; Rescission.**

A. A mobile vendor permit issued under this Chapter may be suspended or rescinded by the City Manager for any cause that would have warranted denial thereof in the first instance, or for failure to comply with any of the provisions of this Chapter or any of the conditions of the mobile vendor permit, including but not limited to fraud or misrepresentation in the course of vending; fraud or misrepresentation in the application for the permit; or 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 mobile vendor permit issued under this Chapter shall be mailed, postage prepaid, to the holder of the permit at his or her last known address.

C. No person whose mobile vendor permit has been revoked pursuant to this Chapter shall be issued a mobile vendor permit for a period of two (2) years from the date revocation becomes final.

#### **Section 5.68.070 Appeals to City Manager.**

In the event that any applicant or permittee desires to appeal from any denial, suspension, rescission, order, or other ruling of the Director made under the provisions of this Chapter, such applicant, permittee, or other person aggrieved shall have the right to appeal such action or decision to the City Manager pursuant to Chapter 1.12 of this Code. The decision of the City Manager, or his or her designee, on the appeal shall be final and binding on all parties concerned.

## **Section 5.68.080 Violations; Penalties.**

A. It is unlawful for any person to violate any provision or fail to comply with any requirements of this Chapter. A person who violates any provision of this Chapter is guilty of a misdemeanor.

B. This Section is intended to be cumulative to, and not in place of, other rights and remedies available to the City pursuant to the Brentwood Municipal Code and state law, including, but not limited to, commencement of any civil action, the issuance of administrative fines and fees, or administrative action to abate a violation as a public nuisance.

C. The City hereby declares that mobile vending facilities and mobile vendors that are not in compliance with the provisions of this Section are a detriment to the public health, safety, and general welfare and are a public nuisance as defined in Chapter 8.00 (Nuisances) of the Brentwood Municipal Code.

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

**SECTION 3.** 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 4.** 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 5.** Effective Date. This Ordinance shall become effective June 1, 2024.

**SECTION 6.** 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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

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Joel Bryant, Mayor

ATTEST:

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Margaret Wimberly, City Clerk