

URGENCY ORDINANCE NO. 2018-05

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AZUSA, CALIFORNIA, ADDING ARTICLE XIII TO THE CHAPTER 18 AZUSA MUNICIPAL CODE, IMPOSING REGULATIONS ON SIDEWALK VENDING IN COMPLIANCE WITH SENATE BILL 946

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

WHEREAS, by virtue of 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.

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 applies to both charter and general law cities; and

WHEREAS, SB 946 authorizes the implementation of regulations that are directly related to objective concerns about public health, safety, or welfare, and that do not limit sidewalk vendors to operating 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, they are related to objective concerns about public health, safety, and welfare, and they are based on compliance with other generally applicable laws including the Americans with Disabilities Act and the City’s general encroachment-permit requirements for work and activities in the public right of way; and

WHEREAS, standards requiring a minimum path of accessible travel are necessary to comply with the Americans with Disabilities Act and to 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 to promote fire-safety 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 public 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 access ways 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 install or maintain encroachments in the public way should help preserve the public way and contribute to the administrative and liability costs incurred by the community because of such encroachments; and

WHEREAS, the City Council finds that, unless properly regulated, sidewalk vending poses a unique and immediate 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 to move quickly from place to place in the community, including near parks, schools, and other places frequented by children, warrants immediately 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 immediate, 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 immediate, 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 immediate, objective harm to the health, safety, and welfare of the City's residents; and

WHEREAS, unless the City adopts this ordinance on an urgency basis, so that it takes effect immediately, as authorized by Government Code section 36937, subdivision (b), unregulated sidewalk vending poses an immediate threat to the health, safety, and welfare of the public.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AZUSA DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals and Urgency Findings. The above recitals are true and correct and are incorporated herein by this reference as findings in support of the regulations contained in this Urgency Ordinance.

In accordance with California Government Code, Section 36937 and in order to protect the public health, safety and welfare, the City Council also makes the following findings in support of the urgent nature of this Ordinance:

A. The City Council finds that this Urgency Ordinance is enacted in order to protect the public health, safety and welfare by adopting regulations that would become effective on January 1, 2019 to address the requirements of SB 946. Specifically, this Urgency Ordinance mitigates the impacts and threats to the public peace, health, and safety by creating a mechanism to assure that sidewalk vending does not pose a 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.

B. The City Council also finds that this Urgency Ordinance is necessary to promote the immediate preservation of the public peace, health and safety by establishing a regulatory mechanism for street vending that can be in place by January 1, 2019. Otherwise street vending becomes an unregulated permitted activity.

C. Finally, the City Council further finds that the regulations contained in this Urgency Ordinance are reasonable and beneficial and assure that a lawful permit program is in place prior to January 1, 2019.

SECTION 2. This ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) under the State CEQA Guidelines because the proposed action 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. §§ 15268, 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).

SECTION 3. Section 46-311 of Article VII of the Azusa Municipal Code is hereby repealed.

SECTION 4. Article XXIII – Sidewalk Vending is hereby added to the Chapter 18 of the Azusa Municipal Code to read as follows:

“ARTICLE XXIII. – SIDEWALK VENDING.

Section 18-2301. - Purpose.

The City finds that the vending of prepared or pre-packaged foods, goods, 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 article 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 general 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.

Section 18-2302. - Definitions.

For purposes of this article, the following definitions apply:

A. “Certified Famers’ 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.

B. “City” means the City of Azusa.

C. “Fire station” means any facility where fire engines and other fire equipment of the City’s fire services are located.

D. “Park” means a public park owned by the City.

E. “Pedestrian path or pathway” means a paved path owned by the City and held open for pedestrian travel that provides public access between two points and contains a minimum of fourteen feet of width that is other than a sidewalk.

F. “Roaming sidewalk vendor or vending” means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

G. “Sidewalk” means that portion of a highway, or other roadway, set apart by curbs, barriers, markings or other delineation specifically designed for pedestrian travel that is owned by the City.

H. “Sidewalk vendor or vending” means a person who sells, offers to sell, operates, engages in or carries on a food or merchandise vending business from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other public pedestrian path.

I. “Stationary sidewalk vendor or vending” means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a fixed location on a public sidewalk or other public pedestrian path.

J. “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.

K. “Temporary Use Permit” means short-term activities identified by this section that may not meet the normal development or use standards of the applicable zoning district, but may be acceptable because of their temporary nature.

Section 18-2303. - Reserved.

Section 18-2304. - Reserved.

Section 18-2305. - Stationary Sidewalk Vending Locations and Standards.

A. Stationary sidewalk vendors are prohibited from operating or establishing in any residential zone of the City, including, but not limited to, the following neighborhood classification zones and subzones:

Neighborhood Classifications:

NG1 – Neighborhood General 1

NG2 – Neighborhood General 2

NG3 – Neighborhood General 3

Subzones:

Low – Low Density Residential

Med – Medium Density Residential

Mod – Moderate Density Residential

B. In addition, the City Council finds that there are unique geographic and historical characteristics of the City that prevent stationary sidewalk vendors from operating in certain sidewalks and pedestrian pathways without detrimentally affecting the public health, safety and welfare. Among these are sidewalks and pathways located in certain older portions of the City where the nature of the underlying use as a high pedestrian traffic area and/or access to designated historical buildings and/or structures are incapable of supporting both pedestrian traffic and stationary sidewalk vendors. As a result, stationary sidewalk vending shall be prohibited in the following areas:

1. Civic District. The Civic District includes the Historic Azusa Auditorium and the adjacent grounds. The Azusa Auditorium was placed on the National Register of the National Historic Landmark Program in 2002. Continuous stationary sidewalk vending will hinder the historic views and access to the Azusa Auditorium and adjacent grounds.

2. Azusa Inter-modal Transit Center. The Azusa Inter-modal Transit Center is a high pedestrian and vehicle traffic area with various modes of vehicular and pedestrian traffic in use, including light rail, buses, cars, skateboards, bicycles and scooters. Stationary sidewalk vending would create obstacles to pedestrian access to the light rail platforms and obstruct various lines of sight that would be detrimental to existing vehicular traffic and pedestrian activities in this area.

3. Santa Fe Depot. The Santa Fe Depot is a historic property. Stationary vending would hinder historic views of the building and be contrary to the public welfare. .

4. Promenade Plaza The Promenade Plaza is located at the foothills of the San Gabriel

National Monument. Stationary vending would hinder the views of the San Gabriel National Monument and be contrary to the public welfare.

C. Stationary sidewalk vendors may operate in non-residential zones of the City, including mixed-use zones, if they satisfy each of the following requirements:

1. The sidewalk vendor is duly licensed and meets all requirements of this article; and
2. The sidewalk vendor's vending operation leaves a minimum of 36 inches of accessible path of travel, without obstruction, along the public sidewalk or public pathway; and
3. Sidewalk vending hours are only conducted between the hours of 7:00 AM and 9:00 PM; and
4. The sidewalk vendor maintains the vending area in a clean, orderly, and sanitary condition; and
5. The sidewalk vendor location does not block entrances to private buildings, private driveways, parking spaces, or building windows; and
6. No vending occurs within ten feet of a fire hydrant, fire escape, bus stop, loading zone, handicapped parking space or access ramp, fire station driveway, or police station driveway; and
7. No vending shall occur within one hundred (100) feet of the entrance to a school; and
8. No table, chair, fence, freestanding shade structure, other site furniture, or any freestanding sign is permitted in conjunction with the vendor's vending activities; and
9. The vendor shall not attach or use any external water line, electrical line, or gas line during vending operations, except as built into and part of the vending cart; and
10. Exterior storage or display of refuse, equipment, materials, goods, wares, or merchandise associated with the vendor that is not offered for sale is prohibited; and
11. No vending shall occur within 300 feet of a City-sponsored event, Certified Farmers' Market, a Swap Meet, or an event for which a Temporary Use Permit has been issued; and

12. The vendor shall prominently display a copy of the City vending permit issued to them and, for vending requiring a County Health Department permit, a copy of the County Health Department permit.

Section 18-2306. - Sidewalk Vending in Parks, Certified Farmer's Markets.

A. Sidewalk vending of food or merchandise by roaming or stationary vendors is prohibited in both of the following:

1. Any City park that has a concession stand operated by a vendor under exclusive contract with the City to sell food or merchandise that is similar to or that competes with that of the sidewalk vendor.
2. Any area that is occupied by a Certified Farmer's Market.

B. Subject to subsection A of this section, a sidewalk vendor may operate in a City park if the vendor satisfies each of the following requirements:

1. The sidewalk vendor is duly licensed and meets all the requirements of Section 18-2306; and
2. For stationary sidewalk vending, the sidewalk vendor's vending operation leaves a minimum of 36 inches of accessible path of travel, without obstruction, along the public sidewalk or public pathway; and
3. The sidewalk vendor ceases operations one hour prior to the close of the park; and
4. The sidewalk vendor obtains an encroachment permit for stationary sidewalk vending operation prior to operating; and
5. The sidewalk vendor maintains the vending area in a clean, orderly, and sanitary condition; and
6. The sidewalk vendor location does not block entrances to any building, driveway, parking space, or building window; and
7. No vending occurs within 300 feet of an event for which a Temporary Use Permit has been issued.
8. In a City park that is located within a residential zone, where stationary sidewalk vending is prohibited as set forth in Section 18-2305, only roaming sidewalk vendors shall be allowed in the park.

Section 18-2307. - Roaming Sidewalk Vending.

Roaming sidewalk vendors shall satisfy each of the following requirements:

- A. The sidewalk vendor is duly licensed and meets all requirements of this chapter; and
- B. Sidewalk vending hours in residential zones is only conducted between the hours of 11:00 AM and 8:00 PM; and
- C. Sidewalk vending hours in non-residential zones (including mix-use zones) is only conducted between the hours of 7:00 AM and 9:00 PM; and
- D. The sidewalk vendor maintains the temporary vending area in a clean, orderly, and sanitary condition; and
- E. The sidewalk vendor does not block the entrances to any buildings or any driveway, parking space, or building window; and
- F. Sidewalk vendors do not stop in any location for the purpose of making sales for more than 15 minutes; and
- G. The sidewalk vendor does not conduct sales from a public street unless there is no sidewalk; and
- H. No vending shall occur within one hundred (100) feet of the entrance to a school; and
- I. The vendor shall prominently display a copy of the City vending permit issued to them and, for vending requiring a County Health Department permit, a copy of the County Health Department permit.
- J. No vending occurs within 300 feet of a Certified Farmers' Market, a Swap Meet, or an event for which a Temporary Use Permit has been issued.
- K. No sound amplification equipment, music or live entertainment may be used in conjunction with any vendor sales in residential areas, including bells, whistles or horns.

Section 18-2308. - Reserved.

Section 18-2309. - Reserved.

Section 18-2310. - Penalties.

- A. It is unlawful for any person to violate any provision or fail to comply with any requirement of this chapter. A violation of this chapter is punishable by:
 - 1. An administrative fine not exceeding \$100 for a first violation.

2. An administrative fine not exceeding \$200 for a second violation within one year of the first violation.
3. An administrative fine not exceeding \$500 for each additional violation within one year of the first violation.

B. Notwithstanding subsection (A) of this subsection, at the city officer's discretion, vending without a sidewalk vending permit may be punished by:

1. An administrative fine not exceeding \$250 dollars for a first violation.
2. An administrative fine not exceeding \$500 for a second violation within one year of the first violation.
3. An administrative fine not exceeding \$1,000 for each additional violation within one year of the first violation.

C. If an individual is subject to subsection (B) of this section, upon the individual providing proof of a valid permit issued by the City, the administrative fines set forth in this chapter shall be reduced to the administrative fines set forth in subsection (A) of this section.

D. The proceeds of any administrative fines assessed under this chapter shall be deposited in the treasury of the City as general funds.

E. Failure to pay an administrative fine assessed under this chapter shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in this chapter shall not be assessed.

F. Any violation of this chapter shall not be punishable as an infraction or misdemeanor, and any person alleged to have violated any provisions of this chapter shall not be subject to arrest except when otherwise permitted under law.

G. When imposing an administrative fine under this chapter, the city officer who imposes the fine 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 fine 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, 20 percent of the administrative fine imposed under this chapter.
2. The City may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

H. A person who is currently serving, or who has 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.

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

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 does not affect other provisions or applications of this ordinance that 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 Azusa hereby declares that it would have adopted this ordinance and each section, sentence, clause, and phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases might be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Urgency Ordinance was adopted by the necessary four-fifths vote of the members of the City Council in accordance with California Government Code sections 36934 and 36937, and takes effect immediately upon adoption.

SECTION 7. Publication. The City Clerk shall certify to the adoption of this ordinance. Not later than 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.

PASSED, APPROVED, and ADOPTED at a regular meeting of the City Council on the 17th day of December, 2018, by the following vote:

/s/Joseph Romero Rocha, Mayor

ATTEST:

/s/Jeffrey Lawrence Cornejo, Jr., City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)ss.
CITY OF AZUSA)

I HEREBY CERTIFY that the foregoing Urgency Ordinance No. 2018-05 was duly introduced and adopted at a regular meeting of the City Council of the City of Azusa on the 17th day of December, 2018, by the following vote:

AYES: COUNCILMEMBERS: CARRILLO, GONZALES, MACIAS, ALVAREZ, ROCHA
NOES: COUNCILMEMBERS: NONE
ABSENT: COUNCILMEMBERS: NONE

/s/Jeffrey Lawrence Cornejo Jr., City Clerk

APPROVED AS TO FORM:

/s/Best Best & Krieger LLP, City Attorney

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