

ORDINANCE NO. 997B

AN ORDINANCE REPEALING AND RE-ENACTING CHAPTER 5.24 OF THE LINCOLN MUNICIPAL CODE REGARDING THE REGULATION OF STREET VENDORS; REPEALING AND RE-ENACTING SECTION 10.40.110 OF THE LINCOLN MUNICIPAL CODE REGARDING THE REGULATION OF STREET VENDORS; AND FINDING THE ORDINANCE IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER CEQA

WHEREAS, Senate Bill 946 was signed by the Governor on September 17, 2018;

WHEREAS, with the passage of Senate Bill 946, the state legislature found, among other things, that sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and migrant communities, and increases access to desired goods, such as culturally significant food and merchandise; and

WHEREAS, the state legislature further found that sidewalk vending contributes to a safe and dynamic public space, and the safety and welfare of the public is promoted by encouraging local authorities to support and property regular sidewalk vending, and by prohibiting criminal penalties for violations of sidewalk vending regulations and ordinances; and

WHEREAS, the state legislature further found the state intended to occupy the field by this regulation, finding the criminalization of small business entrepreneurs, and the challenges those entrepreneurs face as a result of a criminal record, are matters of statewide concern; and

WHEREAS, the state legislature further found unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business; and

WHEREAS, it is necessary to enact reasonable restrictions on street vending to protect the objective health, safety and welfare of the City's residents; and

WHEREAS, it is necessary to enact reasonable restrictions on street vending on City-owned property to ensure the public's use and enjoyment of natural resources and recreational opportunities; and

WHEREAS, it is necessary to enact reasonable restrictions on street vending to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of City's parks, open space, preserves and recreational facilities.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LINCOLN does ordain as follows:

Section 1. The City Council hereby incorporates by reference the recitals set forth above.

Section 2. This Ordinance is not subject to the California Environmental Quality Act ("CEQA"), as codified at Public Resources Code §§ 21000, *et seq.*, and as further governed by 14 California Code of Regulations §§ 15000, *et seq.*, because it is not a project as contemplated by 14 C.C.R. § 15378. In addition, even if this Ordinance were subject to CEQA, the City Council finds this Ordinance would be exempt from the requirements of CEQA pursuant to 14 C.C.R. § 15061(b)(3), because there is no possibility it will have a significant effect on the environment.

Section 3. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. City Council hereby declares that it would have adopted the Ordinance and each section, sub-section, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

Section 4. Within fifteen days of passage of this Ordinance, the City Clerk shall cause the full text of the Ordinance, with the names of those City Councilmembers voting for and against the Ordinance, to be published in the Lincoln News Messenger. In lieu of publishing the full text of the Ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the Ordinance, prepared by the City Attorney and with the names of the City Councilmembers voting for and against the Ordinance, to be published in the Lincoln News Messenger, and shall post in the office of the City Clerk a certified copy of the City Councilmembers voting for and against the Ordinance. The publication of a summary of the Ordinance in lieu of the full text of the Ordinance is authorized only where the requirements of Government Code § 36933(c)(1) are met.

Section 5. Repeal. Existing Chapter 5.24 – Street Vendors is hereby repealed.

Section 6. Re-enactment. Chapter 5.24 is hereby re-enacted as follows:

CHAPTER 5.24 – STREET VENDORS

5.24.010 – Definitions.

For purposes of this chapter, the following definitions apply:

- (1) "Cart" collectively means a Stationary Cart or Mobile Cart.
- (2) "Certified farmer's market" means a location operated as defined in Food and Agricultural Code § 47000, *et seq.*, and any regulations adopted pursuant to that chapter
- (2) "Citation" means an administrative citation issued pursuant to Chapter 1.20 of this Code, unless otherwise specified.
- (3) "City" means the City of Lincoln, a municipal corporation.
- (4) "Department" means the Finance Department of the City.
- (5) "Food" means any type of edible substance or beverage.
- (6) "Goods or Merchandise" means any item that is not food.
- (7) "Mobile cart" is a piece of equipment used for vending, including a pushcart, pedal-driven cart, wagon or other non-motorized conveyance, or from one's person, upon a sidewalk or other pedestrian path. These non-motorized conveyances exclude vehicles, as defined in

the Vehicle Code of the State of California, from which food or beverages are offered for sale to the public.

(8) "Mobile vendor" means a person who sells food or merchandise on a sidewalk from a mobile cart.

(9) "Person or Persons" means one or more natural persons, individuals, groups, businesses, business trusts, companies, all domestic or foreign corporations, joint stock corporations, joint ventures, partnerships of every kind, Massachusetts business or common law trusts, entities, syndicates, associations, clubs, societies or organizations of any kind composed of two or more individuals, other than as an employee.

(10) "Sidewalk" means any surface in the public right-of-way provided for the exclusive use of pedestrians, including alleys, trails and paths.

(11) "Stationary cart" means a piece of equipment used for vending which has no motor and is not mobile except when being pushed, carried or transported to and from a space on the sidewalk on a daily basis, such as a rack, stand, display or showcase.

(12) "Stationary vendor" means a vendor who vends from a fixed sidewalk location with a stationary cart.

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

(14) "Vend, vends or vending" means to sell, offer for sale, expose or display for sale, solicit offers to purchase, or to barter food or merchandise, or to require someone to negotiate, establish or pay a fee before providing food or merchandise, even if characterized as a donation.

(15) "Vending license" is written approval from the City, required for each person who vends in the City.

(16) "Vending permit" is written approval required for each cart used for vending in the City.

(17) "Vendor" means a person who vends.

5.24.020 – Permit Required.

(1) Every person who engages in vending is a vendor and must first obtain, and at all times maintain, a valid permit.

(2) Every vendor must vend in compliance with the terms and conditions of the permit, and this chapter.

(3) Every cart utilized by a vendor requires a separate permit. A person may apply for a maximum of three permits.

(3) To apply for a permit, the vendor must present valid identification, such as a State of California identification, or any other government-issued identification card, and provide the following information:

(a) The name and current mailing address of the vendor. If the vendor is an agent of an individual, company, partnership or corporation, the name and business address of the principal.

(b) Proof of liability insurance in conformance with the requirements set forth in section 12.02.060.

- (c) A complete list of the food or merchandise to be sold or exchanged.
 - (d) A photograph of the cart to be used for vending.
 - (e) The hours per day and days per week during which vending will be conducted.
 - (f) If an application for a stationary vendor, a description of the proposed location, marked by major cross streets, and whether the north, south, east or west side of the street, and a photograph or sketch of that location.
 - (g) If an application for a mobile vendor in a residential zone, a description or sketch of the route the vendor will travel.
 - (h) Evidence of payment of the license tax set forth under Chapter 5.04 of this Code.
 - (i) For any vendor selling food, certification of the completion of a food handler course by presentation of a copy of the course completion certificate.
 - (j) For any vendor selling food, evidence the cart has been approved by the Placer County Health Department.
 - (k) The vendor's California seller's permit number issued by the California Department of Tax and Fee Administration, if applicable.
- (4) Permits must be attached to the cart and posted where visible.
 - (5) Permits and licenses must be renewed annually, before expiration.
 - (6) Permits and licenses are not transferrable to another person, cart, location or route.
 - (7) Permit applications are reviewed by the Director of Finance and the Chief of Police. The review includes consideration of the nature of the proposed vending activity, the location, and any public safety concerns that may be created by the vending activity.
 - (8) The Director of Finance and the Chief of Police may deny a permit if the vending activity will be located or operated in such a manner as to be injurious to the public health, safety and welfare of the community. Any person aggrieved or dissatisfied by any the denial of a vending permit may within fifteen (15) days of being informed of the decision, file with the City Clerk a notice of appeal to the City Council, stating the reasons why the applicant feels the decision is in error. The City Council shall consider such appeal at its next regular meeting following the filing of the notice of appeal. The Council may rule on the appeal or order the matter under submission, and make its ruling within not later than twenty-one (21) days. The Council may (a) affirm the denial, or (b) overrule the denial and make such order as it deems appropriate in view of all the matters presented at the hearing. The ruling of the City Council shall be final and conclusive.

5.24.030 – Operational Requirements.

- (1) Every vendor with a cart must be in possession of a valid vending license, and the Cart must display a valid vending permit. Food vendors additionally must display their certificate of approval from the Placer County Health Department.

(2) Only mobile carts may be used in residential zones. The vendor shall move continuously, except when conducting a sale, which may last no more than ten minutes per sale.

(3) A vendor may operate a stationary cart only in an authorized commercial or industrial zone. No more than two stationary carts with approved permits may be used to vend on the sidewalk of a single block within commercial and industrial zones.

(4) Vendors must provide trash receptacles for customers and ensure proper disposal of customer trash. A vendor may not utilize City trash receptacles for this purpose. Vendors must leave their area clean by the approved closing time.

(5) No cart may be chained or fastened to any pole, sign, tree or other object in the public right-of-way or left unattended.

(6) Vendors may not vend on City-owned property without prior City approval.

(7) Vendors may operate between the hours of sunrise to sunset.

(8) Vendors must at all times vend in compliance with this Chapter.

5.24.040 – Placement of Carts.

Vending food or merchandise on City sidewalks or rights of way is prohibited:

- (1) Within 5 feet of a marked crosswalk;
- (2) Within 5 feet of the curb return of an unmarked crosswalk;
- (3) Within 5 feet of any fire hydrant;
- (4) Within 5 feet of any designated bus stop, bus zone or bus bench;
- (5) Within 5 feet of a driveway apron;
- (6) Within 5 feet of an outdoor dining or patio dining area;
- (7) Within 18 inches from the edge of the curb;
- (8) Where placement impedes the flow of pedestrian traffic less than that required by the Americans with Disabilities Act and other relevant standards for accessibility, or impedes access to or the use of abutting property, including but not limited to, residences and places of business; and
- (9) Within 50 feet of a permitted certified farmers' market or permitted swap meet during the limited operating hours of that certified farmers' market or swap meet.

5.24.050 – Compliance, Enforcement and Penalties.

(1) A vendor found in violation shall be issued a citation subject to the following administrative penalties:

- (a) Vending without a valid permit or license:
 - (i) \$250 for the first violation;
 - (ii) \$500 for a second violation within one year of the first violation;
 - (iii) \$1,000 for each additional violation within one year of the first violation.

Upon subsequent provision of proof of the existence of a valid permit or license, the administrative fines in this subparagraph shall

be reduced from \$250 to \$100, from \$500 to \$250, and from \$1,000 to \$500.

(b) Vending in violation of the conditions of the permit, license or this chapter, other than vending without a valid permit or license:

- (i) \$100 for the first violation;
- (ii) \$200 for a second violation within one year of the first violation;
- (iii) \$500 for each additional violation within one year of the first violation.

(2) The City may revoke or suspend any permit issued to a vendor for the term of that permit upon the fourth or subsequent violations. The revocation or suspension proceedings shall be conducted pursuant to Sections 5.04.240, 5.04.250 of this Code. A vendor whose license or permit is revoked may not renew their license or permit for one year.

(3) When assessing an administrative fine pursuant to this section, the vendor shall be provided notice of his or her right to request an ability-to-pay determination.

(4) Notwithstanding the provisions of Section 5.04.230, failure to pay an administrative fine levied pursuant to this section shall not be punishable as a crime.

5.24.060 – Exceptions.

(1) This chapter shall not apply to the following activities and businesses:

- (a) Seasonal temporary holiday sales, such as a pumpkin patch or Christmas tree sales;
- (b) Fireworks sales;
- (c) Yard sales operated during daylight hours, conducted for no longer than two days, and no more frequently than twice per year;
- (d) Vending attendant to a temporary circus or carnival activities not to exceed a four day period;
- (e) Mobile health or veterinary clinics;
- (f) Fundraising activities conducted by organizations exempt from the business operations tax; or
- (g) Lemonade stands, or similar enterprises operated solely by persons under the age of sixteen on private residential property for a period of two consecutive days or less per week.

(2) Nothing in this section relieves persons engaged in the exempted activities or businesses from obtaining any other permit or license required by law, or from conducting the exempted activities or businesses in compliance with the law.

Section 7. Repeal. Existing Section 10.40.110 – Peddler, vendor, cartage vehicles is hereby repealed.

Section 8. Re-enactment. Section 10.40.110 is hereby re-enacted as follows:

10.40.110 – Peddlers and street vendors.

(a) All mobile and stationary street vendors shall be in compliance at all times with Chapter 5.24 and section 5.04.175 of this Code. Violations are punishable by an administrative citation pursuant to section 5.24.050.

(b) All peddlers and solicitors shall be in compliance at all times with section 5.04.170 of this Code.

(c) Nothing in this Code excuses peddlers, solicitors and street vendors from compliance with generally applicable laws, for which criminal penalties may be imposed.

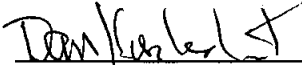
INTRODUCED at a regular meeting of the City Council of the City of Lincoln held on August 27, 2019.

PASSED AND ADOPTED this 10th day of September, 2019.

AYES: COUNCILMEMBERS: Karleskint, Gilbert, Andreatta, Silhi, Joiner

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:



Dan Karleskint, Vice Mayor

ATTEST:



Gwen Scanlon, City Clerk