DATE: January 8, 2019

TO: City Council

FROM: Stephen Fischer
City Attorney

SUBJECT: Vending Ordinance Adoption.

CONTACT: Stephen Fischer, City Attorney
Stephen.Fischer@oxnard.org, (805) 385-7483

RECOMMENDATION:

That City Council adopt Ordinance No. 2952 amending Chapter 8, Article IV, Division 1, Sec. 8-47 of the Oxnard City Code regarding operating regulations for vending on public property.

BACKGROUND

Ordinance No. 2952 amends Chapter 8, Article IV, Division 1, Sec. 8-47 of the Oxnard City Code regarding operating regulations for vending on public property. The City Council approved the first reading by title only and waived further reading of Ordinance No. 2952 at its regular meeting of December 18, 2018. If adopted, Ordinance No. 2952 would take effect February 7, 2019.

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard. This item supports the following goals and objectives: Goal 1. Improve community safety and quality of life through a combination of prevention, intervention, and suppression efforts that address crime and underlying issues. Goal 3. Strengthen neighborhood development, and connect City, community and culture.

FINANCIAL IMPACT
The City may incur additional costs in regulating vendors as it relates to this ordinance, but those costs are not estimated to be significant at this time.

Prepared by Deputy City Attorney Jason Zaragoza, Planning Manager Kathleen Mallory, and Code Compliance Manager Roger Brooks.

ATTACHMENTS:

VENDING ORDINANCE 2952
WHEREAS, on September 17, 2018, Governor Brown signed Senate Bill No. 946 (“SB 946”), adding sections 51036–51039 to the Government Code; and

WHEREAS SB 946 decriminalizes sidewalk vending and limits local regulations to those expressly provided for in the bill or are otherwise “directly related to objective health, safety, or welfare concerns”; and

WHEREAS, the City desires to adopt a sidewalk vending ordinance and amend its vending ordinance to ensure compliance with state law.

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

PART 1. Chapter 8, Article IV, Division 1, Sec. 8-47 of the Oxnard City Code is hereby repealed and replaced in its entirety.

PART 2. Chapter 8, Article IV, Division 1, Sec. 8-47 of the Oxnard City Code is added to read as follows:

“CHAPTER 8: VEHICLES, TRAFFIC AND VENDING

SEC. 8-47. VENDING FROM VEHICLES AND HUMAN POWERED DEVICES.

(A) DEFINITIONS - For the purposes of this section, the following words shall have the following meanings.

(1) GOODS OR MERCHANDISE - Items and products of every kind and description, including all food, produce, and beverage items.

(2) HUMAN POWERED DEVICE - Any device moved by human power, including, but not limited to, a pushcart, wagon, bicycle, tricycle, pedal-driver cart, other non-motorized conveyance, or other wheeled container or mechanism, or from one’s person.

(3) ROAMING SIDEWALK VENDOR - A Sidewalk Vendor who moves from place to place and stops only to complete a transaction.

(4) SIDEWALK VENDOR - A person who Vends Goods or Merchandise upon a public Sidewalk from a structure, stand, display, showcase, rack, or Human Powered Device.

(5) SPECIAL EVENT - A city permitted event including, but not limited to, carnivals, sporting events, fairs, art shows, and/or cultural events.
(6) STATIONARY SIDEWALK VENDOR- A Street Vendor who Vends from a fixed location with a valid encroachment permit.

(7) STREET VENDOR- A person who drives a vehicle for the purposes of vending on a public street.

(8) VEND OR VENDING - Any act of hawking, operating noise-making devices to attract attention to the vendor, or the displaying, selling, or offering for sale of any displayed Goods or Merchandise to the public from any carrying device, box, bag, stand, or Human Powered Device.

(B) STREET VENDING

(1) Except as provided in this section, no person shall park any vehicle from which merchandise, food or other items are sold or displayed or offered for sale, barter or exchange, on any portion of any street, alley, sidewalk or public property within the city.

a. No person shall park such vehicle within or from the following locations:

   i. The public right-of-way on C Street, Channel Islands Boulevard, Camino Del Sol, Del Norte Boulevard, Fifth Street, Gonzales Road, Harbor Boulevard, Hueneme Road, Oxnard Boulevard, Pleasant Valley Road, Rice Avenue, Rose Avenue, Saviors Road, Ventura Road, Victoria Avenue, Vineyard Avenue, or Wooley Road; or

   ii. The public right of way within 100 feet of any intersection, or within 50 feet of any driveway or of another such vehicle parked on the public right of way.

b. Every person operating such vehicles shall have in his or her possession a valid business tax certificate issued by the city.

c. No person shall park any such vehicle within 900 feet of any school or day-care center between 7:00 a.m. and 4:00 p.m., on the days school is in session.

d. In residential areas, as shown on a map on file with the license collector, no person shall park any such vehicle or container on any day before 9:00 a.m. or sunrise, whichever is later, or after 7:00 p.m. or sunset, whichever is earlier.

e. When parked, the person operating such vehicle or container shall:

   i. Stop playing music, ringing bells or making other noise that advertises such person's presence or wares; and

   ii. Provide a visible trash receptacle for use by bona fide purchasers.

f. The provisions of this section shall not apply to:
i. A person delivering items from a store or other fixed place of business or distribution to a customer pursuant to an order of, or by agreement with, such customer;

ii. A person who has obtained a temporary use permit to park such a vehicle on specific public property; or

iii. A person who has a written license agreement with the city to park such vehicle on specific public property.

(C) SIDEWALK VENDING

(1) In residential areas, only a Sidewalk Vendor with a valid vendor permit issued pursuant to Chapter 11, Article 1, Division 3 of the City Code may vend upon the City’s public right of way.

(2) Every person to whom a valid business tax certificate and/or permit is issued shall:

a. Comply with the California Retail Food Code as codified in Part 7 of California Health and Safety Code 113.700 et. Seq., if vending food;

b. Not vend from any structure, stand, display, showcase, rack, ground placed display, or Human Powered Device which exceeds eighteen (18) square feet, or exceeds a linear distance greater than six (6) feet, on any one side;

c. Not occupy space on any sidewalk or path of travel in such a way that would impede upon the required sidewalk width or path of travel requirement pursuant to the federal Americans with Disabilities Act of 1990 or other disability access standards;

d. Not vend within five hundred (500) feet of an area designated for a Special Event;

e. Not vend upon a street median;

f. Not vend within one hundred (100) feet of any intersection;

g. Not vend within five hundred (500) feet of any freeway on-ramp or off-ramp as defined in the Vehicle Code;

h. Not vend within nine hundred (900) feet of the property line of any school or any day care center between the hours of 7:00 a.m. and 4:00 p.m. on the days the school is in session;

i. Sidewalk Vending hours’ limitations in areas zoned for nonresidential use shall be as restrictive as any limitations on hours of operation imposed on other businesses or uses on the same street, excluding those permitted to operate 24 hours;

j. In residential areas, Roaming Sidewalk Vending shall be limited to the hours of 9:00 a.m. or sunrise, whichever is later, and 7:00 p.m. or sunset, whichever is earlier;
k. Stationary Sidewalk Vending is prohibited in areas that are exclusively residential; and

l. Stationary Sidewalk Vendors are prohibited from operating in a city park if the city has entered into exclusive agreements for the sale of food or merchandise by one or more concessionaries for that city park.

(D) PENALTIES

(1) Every person Vending in violation of this Section is guilty of administrative violation punishable by administrative fines established by city council resolution.

(2) Failure to pay an administrative fine is not punishable as an infraction or misdemeanor.

(3) If a violator of this Section fails to pay any fines, fees, or other assessments, the City may levy a lien on a violator’s real or personal property, including the vehicle used for vending purposes.”

PART 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

PART 4. Pursuant to Government Code Section 36933(c)(1), the City Attorney was designated to prepare, and the City Clerk published, a summary of this ordinance, and a certified copy of the ordinance was posted in the Office of the City Clerk a minimum of five days before the City council’s adoption of the ordinance.

PART 5. The City Clerk shall certify as to the adoption of this ordinance and shall cause the summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this ordinance, including the vote for and against the same, in the office of the City Clerk, in accordance with Government Code Section 36933. Ordinance No. 2952 was first read on December 18, 2018 and finally adopted on January 8, 2019 to become effective thirty days thereafter.

AYES:

NOES:

ABSENT:

ABSTAIN:

__________________________________
Tim Flynn, Mayor

ATTEST:

APPROVED AS TO FORM:

__________________________________
Michelle Ascencion, City Clerk

__________________________________
Stephen M. Fischer, City Attorney