

Regular Council Meeting

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July 20, 2023

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FRESNO CITY COUNCIL



Supplement Packet

ITEM(S)

1-KK (ID 23-1050)

Resolution - Creating A Pilot Program to Improve The Safety Of And Establish Procedures For Sidewalk Vending In Tower District

Contents of Supplement: Resolution

Item(s)

Supplemental Information:

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RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, CREATING A PILOT PROGRAM
TO IMPROVE THE SAFETY OF AND ESTABLISH
PROCEDURES FOR SIDEWALK VENDING IN TOWER
DISTRICT

WHEREAS, on September 17, 2018, California Governor Brown signed Senate Bill 946 (SB 946) into law, which added Chapter 6.2 (commencing with Section 51036) to Part 1 of Division of Title 5 of the California Government Code to regulate sidewalk vendors throughout the state, including within the City of Fresno (the City); and

WHEREAS, SB 946 established requirements for local regulations of sidewalk vendors and required that such regulations to be adopted by a resolution or ordinance; and

WHEREAS, the City seeks to implement a Sidewalk Vending Procedures Pilot Program (Pilot Program) within the Tower District, south of McKinley Avenue, west of Blackstone Avenue, north of Belmont Avenue, and east of Palm Avenue, on each side of each of those boundary streets (Pilot Program Zone); and

WHEREAS, the Pilot Program would establish operational requirements for sidewalk vendors in the Pilot Program Zone to comply with SB 946 and protect the health, safety, and welfare of the community; and

WHEREAS, the City finds that the regulations set forth herein are directly related to objective health, safety, and welfare concerns, including but not limited to the health, safety and welfare of vendors, their prospective customers, pedestrians, those protected

Date Adopted:
Date Approved:
Effective Date:
City Attorney Approval: _____

Resolution No. _____

by the Americans With Disabilities Act, those operating motor vehicles at intersections and in rights-of-way adjacent to sidewalks, and the public at large; and

WHEREAS, on Thursdays between 5:00 PM and 9:00 PM, a certified farmer's market operates within the Pilot Program Zone (Tower District Farmer's Market) on Olive Avenue between Wishon Avenue and Echo Avenue; and

WHEREAS, the Council now wishes to establish a 90-day Pilot Program under the terms set forth below.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

SECTION 1: FINDINGS.

1. The purpose of this Resolution is to establish sidewalk vending procedures in the Pilot Program Zone consistent with Government Code sections 51036 through 51039 while also protecting the health, safety, and welfare of the public.

2. The Pilot Program Zone encompasses an area with a highly concentrated amount of businesses, events, and associated foot traffic. Many people travel to the Pilot Program Zone to enjoy nighttime entertainment, including bars and nightclubs. In the Pilot Program Zone within the last 12 months, there have been 14 violent incidents between the hours of 1:30 a.m. and 4:00 a.m. These incidents include shootings, stabbings and robberies. Additionally, during the same time period, there have been approximately 200 disturbances that have required a law enforcement response. These incidents can be attributed to multiple factors, including but not limited to: existing businesses and violations of ABC licenses and Conditional Use Permits. After 2:00 a.m., due to shift changes and frequency of calls for service elsewhere in the policing district, the

availability of public safety personnel needed to respond to these types of incidents has been impacted. Based upon this frequency of criminal activity, and the concentration of people who are drawn to the Pilot Program Zone, reasonable regulations are directly tied to the health, safety, and welfare of the residents, sidewalk vendors, established businesses, and their patrons.

3. Prohibiting sidewalk vendors from operating where placement impedes pedestrian access to or the use of an abutting property, including but not limited to, areas located within 100 feet of residences or within 50 feet of the entrance or exit from any place of business with an operational kitchen during the Pilot Program Time Period is necessary to protect the welfare of residents of the City by maintaining access and use of said buildings.

4. Prohibiting sidewalk vendors from operating within 10 feet of another sidewalk vendor will reduce the likelihood of an obstruction of the sidewalks and will help eliminate the need for any pedestrian to enter the vehicular right-of-way, protecting the public's health, safety, and welfare.

5. Prohibiting sidewalk vendors from operating within 18 inches from the edge of the curb face is necessary to protect the health, safety and welfare of the vendor, customer, and motorists, as it reduces exposure to pedestrian versus vehicle contact, and ensures better visibility for drivers of vehicles entering or exiting driveways.

6. Prohibiting sidewalk vendors from operating during the Tower District Farmer's Market is necessary to protect the welfare of residents of the City by maintaining the integrity of this certified farmer's market.

7. Prohibiting sidewalk vendors from operating in the immediate vicinity of an area designated for a temporary special permit issued by the City is necessary to protect the welfare of residents of the City by maintaining the integrity of the event associated with the temporary special permit.

SECTION 2: The following regulations are adopted effective immediately:

Section 2.1 – Purpose

The purpose of this Resolution is to establish a Pilot Program to establish street vending procedures in accordance with state law. The reasonable time, place, and manner regulations set forth in this Resolution are necessary to protect the public health, safety and welfare by, among other things, ensuring unobstructed pedestrian travel on City sidewalks and minimizing potential conflicts between motor vehicles and pedestrians and vendors in the public right-of-way. Furthermore, procedures are necessary to prevent unsanitary conditions, and to ensure trash and debris in the areas vending is taking place are removed by vendors.

Section 2.2 - Definitions

The following terms used in this Resolution shall have the meaning indicated below:

“Certified Farmer’s 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.

“Food” means any type of edible substance or beverage intended primarily for consumption by human beings.

“Immediate vicinity” means within five hundred (500) feet.

“Median” means roadway medians and parkway islands.

“Merchandise” means small and easily carried or worn items that are not food or drinks, including but not limited to, souvenirs, toys, articles of clothing, flowers, etc.

“Public right-of-way” means the area dedicated to public use for street or pedestrian purposes, including privately owned and maintained roads within the city that are generally held open to the public for purposes of vehicular and pedestrian traffic and includes alleys, driveways, highways, medians, parkways, planter strips, roads, sidewalks, and streets.

“Roaming sidewalk vendor” means a sidewalk vendor who moves from place to place with stops to complete a transaction.

“Sidewalk” means that portion of the public right-of-way provided for the primary use of pedestrians along or adjacent to the street, including a public pathway provided for the primary use of pedestrians.

“Sidewalk vendor” means a person who sells food, drinks or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a sidewalk or other pedestrian path. “Sidewalk vendor” includes “roaming sidewalk vendor” and “stationary sidewalk vendor.”

“Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

“Temporary special permit” means a permit issued by the City for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes

including, but not limited to, filming, parades, athletic events, public assemblies, carnivals, festivals, and outdoor concerts.

“Vend, vends, vended 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.

Section 2.3 - Regulations

1. The City hereby creates a pilot program to establish sidewalk vending procedures within the Pilot Program Zone.
2. As of the Effective Date of this Resolution, no sidewalk vendor shall sell food or drinks in the Pilot Program Zone without first obtaining all of the following:
 - a. A Business License pursuant to Chapter 7, Article 10 of the Fresno Municipal Code.
 - b. A Permit to Operate from the County of Fresno Department of Environment Health.
 - c. Such other permits as may be required by State or local law.
 - d. This subsection shall not apply to vendors operating from a compact mobile food operation with 25 square feet or less of display area from which only prepackaged non-potentially hazardous food and whole uncooked produce are sold, pursuant to Health and Safety Code section 114368.1(a). Those vendors must comply with subsection 2.3(3).
3. As of the Effective Date of this Resolution, no sidewalk vendor shall sell merchandise in the Pilot Program Zone without first obtaining all of the following:

a. A Business License pursuant to Chapter 7, Article 10 of the Fresno Municipal Code.

b. Such other permits as may be required by State or local law.

4. At all times, a sidewalk vendor shall be in possession of a valid government issued identification, business license, and Health Department permit, if applicable. The City-issued business license shall be prominently displayed in a publicly visible location at all times while vending.

5. This Pilot Program will be active from Thursday through Sunday between the hours of 5:00 p.m. to 8:00 a.m. (Pilot Program Time Period). Between Thursday through Sunday, sidewalk vendors shall serve their last patron by 1:30 a.m. and leave the Pilot Program Zone by 2:00 a.m. Sidewalk vendors shall not operate between the hours of 2:00 am and 8:00 a.m. within the Pilot Program Zone.

6. A sidewalk vendor shall maintain a clean and trash-free 10-foot radius around his or her pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance at all times when it is located on public property. A sidewalk vendor shall immediately clean up any food, grease, or other fluid or item related to sidewalk vending activities which fall onto the sidewalk or other public property. When departing a location used for vending, the sidewalk vendor shall remove all trash and debris from the location. No trash or refuse generated by sidewalk vending activities shall be disposed of in public or private trash receptacles; sidewalk vendors must take the trash generated by their activities with them and dispose of it appropriately.

7. Within the Pilot Program Zone, for public safety reasons, including pedestrian, vehicular, public and vendor safety, a sidewalk vendor shall not operate within

the number of feet designated below from the nearest portion of the corresponding location:

- a. Within 500 feet from any freeway on-ramp or off-ramp.
- b. Within 10 feet of another sidewalk vendor.
- c. Within 100 feet of a residence.
- d. Within 50 feet of the entrance or exit from any place of business that has an operational kitchen during the Pilot Program Time Period. If a business closes its kitchen during the Pilot Program Time Period, this restriction shall not apply. This restriction shall only apply to businesses located on the same side of the street the sidewalk vendor is operating on.

8. Within the Pilot Program Zone, for public safety reasons, including pedestrian, public, and vendor safety, a sidewalk vendor shall not operate in such a manner that the vendor, the vendor's cart, the vendor's display, the vendor's goods, or any combination thereof:

- a. impedes public use of the sidewalk or right-of-way as required by the Americans with Disabilities Act; or
- b. impedes access to or the use of abutting property, including, but not limited to, residences and places of business; or
- c. impedes emergency access for the Police, Fire Department, or medical personnel to any abutting property; or
- d. is located within 18 inches from the edge of the curb face.

9. In the event of a traffic accident, medical emergency, gas leak, natural disaster, fire, on-site construction or related work on a capital improvement project, or an emergency situation, the City may temporarily require sidewalk vendors to relocate to another location if doing so is necessary to protect the public's health and safety.

10. The sale of alcohol, marijuana, adult-oriented material, tobacco products, electronic cigarettes or products that contain nicotine, or any product used to smoke/vape nicotine or marijuana, is prohibited.

11. Vendors shall be present at all times while any food, drink or merchandise is on display on a Sidewalk. Unattended vending is prohibited.

12. Vendors shall comply with all applicable noise ordinances, including but not limited to, Chapter 1, Article 4, of the Fresno Municipal Code.

13. Vendors shall comply with all applicable odor ordinances, including but not limited to Fresno Municipal Code section 15-2510.

14. During the Tower District Farmer's Market, sidewalk vendors not associated with the Farmer's Market shall not operate within the Pilot Program Zone.

15. During an event that has been issued a Temporary Special Permit within the Pilot Program Zone, sidewalk vendors not associated with the Temporary Special Permit shall not operate within the Pilot Program Zone.

Section 2.5: Inspection and Enforcement

Representatives of the Fire Department, Code Enforcement, the Planning Department, or the Finance Department shall be permitted, at any time a sidewalk vendor is operating in the City, to inspect a sidewalk vendor's operation, its required permits, and its vended food and goods for compliance with local or state laws and regulations. Police

Department personnel may be on site to ensure compliance with Section 2.3(5) of this Resolution, specifically related to time limits for sales.

Section 2.5: Violations

1. In accordance with State Law, a person found in violation of this Resolution shall be subject to the following, and except as provided in subsection (e) of this Section 2.5, these provisions shall be the exclusive penalties applicable to violations of this Resolution:

a. Operating as a sidewalk vendor in violation of this chapter, other than the failure to possess a valid sidewalk vending permit:

1. A written warning for a first violation.
2. An administrative fine not exceeding one hundred dollars (\$100) for a second violation within one year of the first violation.
3. An administrative fine not exceeding two hundred dollars (\$200) for a third violation within one year of the first violation.
4. An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

b. A sidewalk vendor may appeal an administrative fine pursuant to Chapter 1, Article 4, of the Fresno Municipal Code.

c. A sidewalk vendor who has been issued an administrative fine pursuant to this Resolution may request a determination of his or her ability to pay the administrative fine pursuant to the provisions of Government Code section 51039(f). If the sidewalk vendor shows proof to the satisfaction of the hearing officer (if the request is made at the time of an administrative appeal

hearing), or the City Manager or his or her designee (if the request is made at any other time), that he or she meets the criteria set forth in Government Code section 68632, subsections (a) or (b), the fine amount shall be reduced to 20 percent of the original fine amount.

- d. Violations of the Fresno Municipal Code not specifically subject to the limitations set forth in Section 51039 of the Government Code shall be subject to enforcement pursuant to the Fresno Municipal Code, as the same may be amended from time to time, in addition to any other applicable penalties or remedies prescribed by law at the time of the violation.

SECTION 3: If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Resolution 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 this Resolution. The City Council hereby declares that it would have adopted this Resolution and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 4: This Resolution shall expire 90 days from its Effective Date, unless renewed by Council.

SECTION 5: This Resolution shall be effective beginning August 1, 2023.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2023.

AYES :
NOES :
ABSENT :
ABSTAIN :

TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Erica Camarena Date
Chief Assistant