

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, APPROVING MUNICIPAL CODE AMENDMENT (MCA) No. 22-01 TO AMEND SECTIONS 13-27 AND 13-30 OF THE FONTANA MUNICIPAL CODE, AMENDING THE ENFORCEMENT AUTHORITY REGARDING THE CITY'S ENVIRONMENTAL HEALTH CODE

WHEREAS, the City of Fontana, 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 sidewalk vending, as long as these are consistent with Senate Bill ("SB 946"); and

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, according to its terms, SB 946 applies to both charter and general law cities; and

WHEREAS, SB 946 explicitly stated that the legislation did not affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code, otherwise known as the California Retail Food Code, to a sidewalk vendor who sells food; and

WHEREAS, the City Council finds that this Ordinance is enacted to protect the public health, safety and welfare, unless properly regulated, sidewalk vending poses a unique 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 City Council finds that the changes to Sections 13-27 and 13-30 of the Fontana Municipal Code are necessary to make clear the City's authority to enforce its Environmental Health Code.

WHEREAS, On January 25, 2022, the City Council held a duly noticed public hearing on Municipal Code Amendment (MCA) No. 22-01.

WHEREAS, a notice of the public hearing was published in the local *Fontana Herald* newspaper on Friday, January 14, 2022 and posted at City; and

THE CITY COUNCIL OF THE CITY OF FONTANA DOES ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference as findings in support of this Ordinance.

Section 2. Section 13-27 of Article II, Chapter 13 of the Fontana Municipal Code is hereby amended to read as follows:

“Pursuant to Health and Safety Code §§ 480 et seq., 500 et seq., and 1155.5, title 17 of the state Administrative Code and other relevant state law, for the protection of the environmental public health, the issuance of permits and collection of fees, and providing penalties and remedies for the violation of such regulations, there is adopted by the city as its environmental health code that certain code known as the Uniform Environmental Health Code, except as provided in section 13-28. The city designates both the City of Fontana, and any employee thereof, and the county department of environmental health services as the enforcement ~~agency~~ agencies for the purpose of this environmental health code and all state law pertaining to environmental health. Pursuant to Government Code § 50022.6, a copy of such code is on file in the office of the city clerk, and such code is hereby adopted and incorporated as if set out at length in this section.”

Section 3. Section 13-30 subsections (a)-(c) of Article II, Chapter 13 of the Fontana Municipal Code are hereby amended to read as follows:

“(a) It is unlawful for any person to deny access to, interfere with, prevent, restrict, obstruct or hinder the city or the department of environmental health services or their agents acting within the scope of their duty or agency. It shall be unlawful for any person to fail to identify oneself upon lawful request by either the city or the department of environmental health services employees or agents acting within the scope of their duty or agency. Offering physical resistance or bodily attack upon authorized representatives of the city or department of environmental health services acting within the scope of their duty or agency is a misdemeanor, punishable by imprisonment in the county jail for not less than ten days, without the alternative of a fine.

(b) In addition to criminal prosecution, civil action and every other remedy or penalty provided by law, public nuisances may be abated or enjoined in any action brought by either the city or department of environmental health services, or under

circumstances immediately dangerous to public health or safety may be summarily abated by enforcement officers of either the city or department of environmental health services as provided in this article or otherwise in the manner provided by law for the summary abatement of public nuisances.

(c) Except where punishable as a misdemeanor or felony under state law or under this article, any person who violates any provision of the environmental health code adopted by this article shall be guilty of an infraction, and upon conviction thereof shall be punished by a fine of not less than \$25.00 but not exceeding \$100.00 for a first violation, a fine not exceeding \$200.00 for a second conviction within one year, and a fine not exceeding \$500.00 for the third conviction within one year; the fourth and additional convictions within one year shall be punishable as misdemeanors and shall be punished by a fine of not less than \$250.00 and not more than \$1,000.00 or by imprisonment in the county jail for a term not exceeding six months, or both; and such convicted person may, in the discretion of the court, be adjudged, in addition to the penalties provided in this section, to be liable to the city and/or the department of environmental health services for all necessary costs incurred in investigation, discovery, analysis, inspection and cleanup and other actual costs incurred by the city and/or the department of environmental health services or its agents pertaining to the violation."

Section 4. Section 13-30 subsection (e) of Article II, Chapter 13 of the Fontana Municipal Code is hereby added to read as follows:

"(e) Unless otherwise stated in this Chapter, any violation of this Chapter may be prosecuted by the City Attorney and be punishable as an infraction or a misdemeanor in accordance with Section 1-7 of the Fontana Municipal Code."

Section 5 CEQA. The City Council finds that this Urgency Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, Section No. 3.22 and 3.07 of the 2019 Local Guidelines for Implementing CEQA, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), Section No. 3.22 and 3.07 of the 2019 Local Guidelines for Implementing CEQA, that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

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Section 6. Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 8353 Sierra Avenue, Fontana, CA 92335. The custodian of these records is the City Clerk.

Section 7. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional. If for any reason any portion of this ordinance is found to be invalid by a court of competent jurisdiction, the balance of this ordinance shall not be affected.

Section 8. Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 8353 Sierra Avenue, Fontana, CA 92335. The custodian of these records is the City Clerk.

Section 9. Effective Date and Publication. This Ordinance shall take effect thirty (30) days after the date of the adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be published by the City Clerk at least once in the Herald News, a local newspaper of the general circulation, published and circulation in the City of Fontana, and henceforth and thereafter the same shall be in full force and effect.

APPROVED AND ADOPTED by the City Council of the City of Fontana, at a regular meeting of the City Council held on the 25th day of January, 2022 by the following vote:

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

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I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted by the City Council at a regular meeting on the 25th day of January 2022, and was finally passed and adopted not less than five days thereafter on the 8th day of February 2022, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

City Clerk of the City of Fontana

Mayor of the City of Fontana

ATTEST:

City Clerk