

ORDINANCE NO. NS-2924

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA ADOPTING THE NEW FOOD VENDING VEHICLE ORDINANCE IN CHAPTER 36 OF THE SANTA ANA MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

A. The City Council of the City of Santa Ana expressly finds that vending vehicles pose traffic hazards and special danger to the safety and welfare of children and residents of the City. The City's intent is to provide clear and concise regulations to ensure safety and prevent traffic hazards, as well as preserve the peace, safety and welfare of the community.

B. The City Council of the City of Santa Ana previously adopted Article XIV in Chapter 36 "Food Vending Vehicles" in December 1994 (Santa Ana Municipal Code sections 36-700 through 36-720).

C. The City Council later adopted Division 3 of Article 1 in Chapter 36 "Vending Vehicles" in 2004 and 2005 (Ordinances NS-2655 and NS-2701) codified as Santa Ana Municipal Code sections 36-50 through 36-63.

D. The later ordinances were challenged in an action filed in Orange County Superior Court (*Vasquez v. City of Santa Ana* - Case No. 05CC13450). The Court ruled for the plaintiffs, finding that California Vehicle Code section 22455 preempted the City ordinances because the City regulations were not limited to protecting public safety.

E. Following the *Vasquez* case, the City has not sought to enact or enforce further regulation of food vending vehicles, even though Vehicle Code section 22455 allows a local authority to adopt additional requirements for mobile vending which restricts the time, place and manner of vending in order to protect the public safety.

F. On August 1, 2017, in an effort to update the Santa Ana Municipal Code (SAMC), the City Council repealed Article XIV in Chapter 36 "Food Vending Vehicles" (SAMC section 36-700 through 36-720) as well as Division 3 of Article 1 in Chapter 36 "Vending Vehicles" (SAMC section 36-50 through 36-63) by Ordinance NS-2922.

G. The City Council hereby adopts a new Food Vending Vehicle ordinance restricting the place and manner of vending in order to protect the public safety in accord with Vehicle Code section 22455.

Section 2. In accordance with the California Environmental Quality Act, the recommended action is categorically exempt from further review per section 15061(b)(3), in that it can be seen with certainty that the project will have no possible significant impact on the environment. As a result, a Notice of Exemption will be filed upon the adoption of this ordinance.

Section 3. The City hereby adopts the new “Food Vending Vehicles”, Article XIV to Chapter 8 of the Santa Ana Municipal Code to read as follows:

#### **ARTICLE XIV. FOOD VENDING VEHICLES.**

##### **Sec. 36-700. Purpose and Intent.**

The City Council expressly finds that vending vehicles pose traffic hazards and special dangers to the safety and welfare of children and residents of the city. It is the purpose and intent of the City Council, in enacting this article, to provide responsible companies and persons who engage in the operation of vending from vehicles with clear and concise regulations to ensure safety and prevent traffic hazards, as well as preserve the peace, safety and welfare of the community.

##### **Sec. 36-701. Definitions.**

As used in this article:

A. “*Crosswalk*” shall be defined by the California Vehicle Code, as that term may be amended from time to time.

B. “*Business license*” means a business license required by Chapter 21 of the City of Santa Ana Municipal Code.

C. “*Food vending vehicle*” or “*vending vehicle*” means any vehicle or trailer, as those terms are defined in the California Vehicle Code, which is equipped or used for retail sales of produce and/or prepared, pre-packaged, or unprepared, unpackaged food or foodstuffs of any kind on any public street, alley or highway or private street or alley within the City. The inventory of these vehicles is not necessarily limited to edible items and may include nonfood sundries. Food vending vehicle as used in this article does not refer to, nor include, ice cream trucks as regulated in Article X of Chapter 36 of this Code.

D. “*Operator*” as used in this article shall mean any entity and all person(s) that:

- (1) Owns, controls, manages, and/or leases a food vending vehicle; and/or
- (2) Contracts with any person(s) to drive, operate, prepare food in, and/or vend from, a food vending vehicle; and/or
- (3) Drive, operate, vend and/or prepare food in or from a food vending vehicle.

E. “*Goods*” or “*merchandise*” shall include items and products of every kind and description, including all foods, produce, and beverage items.

F. “*Park*” shall be defined by Chapter 31 of this Code, as it may be amended from time to time.

G. “*School*” shall mean any institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the state board of education. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include either a vocational institution or a professional institution of higher education, including a community or junior college, college, or university.

H. “*Street*” shall be defined by the California Vehicle Code, as that term may be amended from time to time.

I. “*Vend*” or “*vending*” as used in this article means soliciting, displaying, offering for sale for monetary or other consideration, or sale, of any goods or merchandise to the public from a vehicle; offering produce, prepared food, prepackaged food or nonfood sundries of any kind for sale from a food vending vehicle on a public or private street, alley, highway or public place within the City of Santa Ana and includes the movement or standing of a food vending vehicle for the purpose of searching for, obtaining or soliciting retail sales of produce, prepared food, prepackaged food or nonfood sundries.

J. “*Restocking*” means the transfer of food, goods or merchandise to a food vending vehicle from any other person or vehicle and includes, but is not limited to, loading and delivery of food, goods and merchandise.

### **Sec. 36-702. Operational Requirements.**

A. No person shall own, control, operate, manage, lease, or contract with any other person for the operation of a food vending vehicle in the City without a valid business license issued, in addition to any other license or permit required under any other chapter of this code, for each and every food vending vehicle.

B. All operators shall comply with the following regulations:

1. Each operator vending any produce or other food item shall comply with all County of Orange Health Care Agency requirements for mobile food facilities, as well as all required food handling permits. Each operator shall possess and at all times display such permits in conspicuous view upon each vending vehicle.

Each operator shall possess and at all times display in conspicuous view upon each such vehicle a City business license.

3. Every food vending vehicle shall have the name, address, and telephone number of the holder of the business license permanently affixed on both the left and right sides of the vehicle. Such information shall be in letters and numerals not less than four inches in height and shall be in contrast to the color of the background upon which the letters are placed.

4. No additional lighting other than that required by the California Vehicle Code may be installed or operated on a food vending vehicle. Any signage or display for a food vending vehicle must comply with the generally applicable sign regulations contained in Chapter 41 of the Code.

5. No operator of a food vending vehicle shall operate any sound amplification systems or other sound making devices or music systems to advertise, draw attention to, or announce the presence of any such vehicle while such vehicle is moving, stopped, standing, or parked upon any public or private street.

6. No owner or operator of a vending vehicle shall permit vending within two hundred and fifty (250) feet from a school, park, community center or public playground facility.

7. No owner or operator shall permit the vending vehicle to vend within fifty (50) feet of a marked or unmarked crosswalk in an intersection.

8. No food vending vehicle shall be parked, stopped, or left standing in any manner which blocks or impedes vehicular access to any driveway or restricts the free movement of other vehicles upon any public or private street. Vending shall only be permitted where the food vending vehicle has been brought to a complete stop and parked adjacent to the curb in a lawful manner

9. Vending from a food vending vehicle while the vehicle is parked, stopped, or standing on any public or private street, alley, or highway is permitted only when that part of the food vending vehicle open to prospective customers is on the side of the vehicle immediately next to the right side of the public or private street, alley, or highway. Under no circumstances may vending occur from the left side of a food vending vehicle. Notwithstanding the above

provisions, no person shall vend to any customer whose location creates a traffic hazard.

10. All food vending vehicles shall maintain and make refuse containers available large enough to contain all trash and refuse generated by the operation of such vehicle. The operator of the food vending vehicle shall pick up all trash and refuse generated by the operator's vending during the time the vehicle is stopped, that is within not less than a fifty (50)-foot radius of the vehicle, before such vehicle is moved.

11. Restocking of a food vending vehicle shall only occur where the vehicle is lawfully parked and such restocking does not restrict vehicle or pedestrian traffic or otherwise create a traffic hazard.

12. No food vending vehicle shall attach to or receive any electrical power or other utilities from any public or private property while the vehicle is located on any private or public street or alley without a permit issued by the City of Santa Ana.

13. Vending is prohibited from a food vending vehicle that is parked, stopped, or standing on any public street, alley, or highway where the posted speed limit on the public street, alley, or highway is thirty-five (35) miles per hour or greater.

14. No owner or operator of a vending vehicle shall permit objects, including but not limited to tables, chairs, or other furniture, trash receptacles, generators or equipment, to be placed into that portion of the street, alley or highway which is open to vehicular traffic, nor shall any object, including but not limited to tables, chairs, other furniture, trash receptacles, generators or equipment, be placed within or upon the parkway or sidewalk.

15. In conformance with the California Retail Food Code and County of Orange Health Care Agency/Environmental Health, food vending vehicles shall be stored at or within an approved commissary in order to have protection from unsanitary conditions. Food vending vehicles shall not be stored overnight outside of an approved commissary.

### **Sec. 36-703. Exemptions.**

This article shall not apply to any City-sponsored event where the operator of the food vending vehicle is operating pursuant to a valid contract with the City.

### **Sec. 36-704. Land Use Certificate Required for Vending on Private Property.**

A. Vending on Private Property - Zones. Food vending vehicles shall be allowed on private property in conjunction with a Land Use Certificate and/or special

event permit for activities on property in commercial, manufacturing, or planned development zones designated for commercial or manufacturing uses. Food vending vehicles operating on private property must obtain the consent of the person who is in legal control of the property and subject to the provisions of Chapter 41 of the City of Santa Ana Municipal Code.

B. Vending on Private Property - Activities. Food vending vehicles shall be allowed on private property in conjunction with a Land Use Certificate and/or special event permit for activities such as filming for movies, a party, fair, or carnival. Food vending vehicles operating on private property must obtain the consent of the person who is in legal control of the property and subject to the provisions of Chapter 41 of the City of Santa Ana Municipal Code.

C. Pursuant to this section, the following restrictions apply to vending on private property:

1. A food vending vehicle may only vend and remain parked on private property for the period of time noted in the Land Use Certificate and/or special event permit.

All food vending vehicles are required to have a City of Santa Ana business license conspicuously displayed when vending.

3. Nothing in this section shall be construed to excuse food vending vehicles from complying with all other provisions of this chapter.

### **Sec. 36-705. Penalty for Violation.**

Every violation of the provisions of this article shall be addressed through the use of an administrative citation as set forth in sections 1-21.1 through 1-21.9 of this Code. Each day any violation of any said provision of this article shall continue shall constitute a separate offense. Use of an administrative citation shall not prevent or preclude the City from seeking additional criminal, civil or other legal remedy established by law.

Section 4. If any section, subsection, sentence, clause or 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 this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause or phrase or portion thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase or portions be declared invalid or unconstitutional.

ADOPTED this 19<sup>th</sup> day of September, 201

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Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:  
Sonia Carvalho, City Attorney

By: \_\_\_\_\_  
Lisa Storck  
Assistant City Attorney

AYES: Councilmembers Benavides, Martinez, Sarmiento, Solorio,  
Tinajero, Villegas (6)

NOES: Councilmembers None (0)

ABSTAIN: Councilmembers Pulido (1)

NOT PRESENT: Councilmembers None (0)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2924 to be the original ordinance adopted by the City Council of the City of Santa Ana on September 19, 2017 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: \_\_\_\_\_

\_\_\_\_\_  
Maria D. Huizar  
Clerk of the Council  
City of Santa Ana