

RESOLUTION NO. 2023-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AFFIRMING ITS DEDICATION AND ITS PRIORITY TO PROTECT THE HEALTH, SAFETY AND WELFARE OF ITS RESIDENTS, VISITORS, AND BUSINESS OWNERS IN THE ENFORCEMENT OF STATE SIDEWALK VENDOR REGULATIONS, THE FEDERAL AMERICANS WITH DISABILITIES ACT OF 1990 AND OTHER DISABILITY ACCESS STANDARDS, AND ALL LOCAL REGULATIONS PERTAINING TO THE USE AND MAINTENANCE OF PUBLIC SIDEWALKS AND OTHER PEDESTRIAN PATHWAYS, AND URGING THE STATE LEGISLATURE OF THE STATE OF CALIFORNIA TO AMEND STATE LAW AND ALLOW LOCAL JURISDICTIONS THE RIGHT OF SELF-DETERMINATION TO ENACT LOCAL SIDEWALK REGULATIONS

**WHEREAS**, the City Council of SANTA ANA, CALIFORNIA is committed to supporting an inclusive, thriving, vibrant, and healthy community, regardless of race, ethnicity, age, gender, religion, sexual orientation, gender identity, gender expression, disability, economic status and other diverse backgrounds; and

**WHEREAS**, the government of SANTA ANA, CALIFORNIA is a chartered city as defined under California Government Code Section 51036(d); and

**WHEREAS**, the City of SANTA ANA, CALIFORNIA has experienced an exponential increase in the number of unpermitted stationary sidewalk food vendors within its jurisdiction since Senate Bill 946 was enacted; and

**WHEREAS**, the global Coronavirus disease 2019 (COVID-19) pandemic caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) resulted in fundamental shifts in the ways in which consumers purchase household groceries and food through deliveries, pickup, mobile vending, food delivery, and to-go ordering; and

**WHEREAS**, in response to this fundamental shift, the State and local jurisdictions enacted temporary and permanent regulatory changes surrounding the food industry, enabling, among others, sidewalk vending; and

**WHEREAS**, Senate Bill (SB) 946 was signed into law on September 17, 2018, and became effective January 1, 2019; and

**WHEREAS**, SB 946 severely limits the authority of cities and counties to regulate sidewalk vendors, except in accordance with Government Code Sections 51038 and 51039; and

**WHEREAS**, SB 972 was signed into law September 23, 2022, and became effective January 1, 2023; and

**WHEREAS**, SB 972 built upon the policy framework included in SB 946 and further restricted local jurisdictions' abilities to implement key food vendor regulations, including basic food safety and accessibility requirements; and

**WHEREAS**, SB 946 and SB 972 (the "Bills") provide for regulations by the State Department of Public Health of retail food facilities, including sidewalk vending, and require local health agencies to enforce these provisions; and

**WHEREAS**, following the passage of SB 946, Santa Ana City Code Enforcement Officers and Orange County Health Officials have encountered a rise in negligent stationary sidewalk food vending operations, including the sale of food deemed unfit for human consumption, the presence of unventilated smoke and open flame and other devices emitting flame, fire or potential heat to sensitive groups, the obstruction of adequate sidewalk space for accessibility and safety purposes, and the spillage of food and grease impacting the surface texture of the sidewalk; and

**WHEREAS**, cooking and heating of food through the use of outdoor fires and open flame heating equipment on public sidewalks without proper venting, fire control systems, and proper food heating and handling equipment constitute a danger to the public's health, safety, and welfare; and

**WHEREAS**, the consequences of these Bills have allowed, all too often, largescale stationary food vendors to take over entire sidewalk spaces, thus prohibiting reasonable access for individuals with disabilities, or pushing individuals into the roads with dangerous traffic conditions in order to navigate the lack of available safe sidewalk space; and

**WHEREAS**, reducing the width and destabilizing the surface texture of public sidewalks designed strictly to comply with the Americans with Disabilities Act (ADA) constitutes a danger to the public's health, safety, and welfare; and

**WHEREAS**, the increased number of stationary sidewalk food vendors has resulted in significant time and resources from City Code Enforcement Officers, County Health Officials, and local law enforcement to deal with the aforementioned issues. The focus on stationary sidewalk food vendors means that these public resources are not available to respond to other needs throughout the City; and

**WHEREAS**, with the provisions of SB 972 recently taking effect, the City has experienced a proliferation in the number of stationary sidewalk food vendors and has been further restricted in its abilities for regulating sidewalk activities; and

**WHEREAS**, with the provisions of SB 972 recently taking effect, the City is further restricted in its ability to ensure that that the food being offered is safe for consumption; and

**WHEREAS**, with the provisions of SB 972 recently taking effect, the City is further restricted in its ability to ensure that residents and visitors have adequate access to public sidewalks; and

**WHEREAS**, since the passage of the Bills, the City has found it increasingly difficult to mitigate the public health impacts from stationary sidewalk food vendor operations and their threat to the public's health and safety. Specifically, measures to reduce local health permit regulations for street food vendors, consequently undermine the collective authority of City and County agencies to implement standardized inspections and assign accountability; and

**WHEREAS**, the Bills have eliminated key food health and safety requirements intended to keep food safe for public consumption, such as water requirements and handwashing stations, and prohibit the regulation of where food vendors can be located; and

**WHEREAS**, the County Health Care Agency's Environmental Health Division (EHD) observed that a disproportionately large number of stationary food vendors are corporatized with sophisticated, stationary equipment that encompasses large amounts of sidewalk space, and threatens the livelihoods of local, small-business, brick-and-mortar "mom and pop" vendors that adhere to municipal and state codes; and

**WHEREAS**, the California Health and Safety Code (CH&SC) Section 114381(a) establishes a food facility shall not be open for business without a valid permit; and

**WHEREAS**, stationary sidewalk food vendors continue to operate without first obtaining a valid permit from the local county health authority as provided by section 114381(a) of the California Health and Safety Code; and

**WHEREAS**, the stationary sidewalk food vendors operating within the jurisdiction of SANTA ANA, CALIFORNIA regularly endanger the health, safety, and welfare of Santa Ana residents, visitors, and business owners in that they:

- a. Engage in unsanitary practices in violation of the California Health and Safety Code, including but not limited to transporting uncooked meat in an unsanitary manner and handling uncooked meat and raw food products without necessary and proper handwashing stations on-site; and
- b. Prepare hot food utilizing open flame without necessary and proper fire mitigation measures in place; and
- c. Dismantle their operation temporarily when approached by City Code Enforcement officers, Santa Ana Police officers, County of Orange Health Inspectors, or combination thereof; and
- d. Abandon their equipment and flee the scene when approached by City Code Enforcement officers, Santa Ana Police Officers, County of Orange Health Inspectors, or combination thereof. The abandoned equipment obstructs the public-right-of-way and constitutes a nuisance that must be mitigated at the public's expense; and

- e. Create a nuisance and public health hazard by allowing debris to accumulate in and around their site and deliberately failing to collect and dispose of same upon dismantling their operation; and
- f. Create a nuisance and public health hazard by disposing of used grease on adjacent City of Santa Ana-owned and/or privately-owned grass or green areas, sidewalks and adjacent storm drains; and
- g. Serve food which is or has been deemed by County of Orange Health Inspectors under CH&SC Section 111030 to be unfit for human consumption leaving consumers with no redress for any ill effects of consuming same; and
- h. Trespass and set up their operations on private property without permission of the owner or lessee in control of said private property; and

**WHEREAS**, in a six-week period in late 2022, the City's Code Enforcement Division in partnership with the Orange County Health Care Agency's Environmental Health Division (EHD) inspected over 100 stationary sidewalk food vending operations that were found to be selling food unfit for human consumption and operating without the proper health permit under CH&SC Section 111030; and

**WHEREAS**, the City of Santa Ana is a champion of diversity and inclusivity through its policies and programs in the arenas of demographics, housing, and economic activities, with a progressive and community-benefits oriented General Plan and Housing Element, both comprehensively updated and adopted in 2022, that promote and celebrate the diversity of all groups in the community, specifically:

- a. The Land Use Element, which promotes a balance of land uses and business activities in the City by promoting new investment in key areas and preservation of existing communities in others; and
- b. The Economic Prosperity Element, which seeks new endeavors to diversify the City's economic base while ensuring all demographic groups in Santa Ana benefit from healthy and balanced economic development; and

**WHEREAS**, the City of Santa Ana routinely promotes and has permitted micro ("ghost") kitchens in its industrial zones, allowing businesses to utilize shared kitchens to prepare foods in a sanitary setting designed and constructed for such activities, most recently at 2509 South Broadway and 3200 South Susan Street, to supply a surging demand for incubator spaces for food-related manufacturing, production, and mobile food vending; and

**WHEREAS**, the City of Santa Ana has consistently demonstrated leadership in access to alternative means of acquiring household groceries and food through deliveries, pickup, mobile vending, food delivery, and to-go ordering by enacting legislation that permits and regulates these activities, specifically:

- a. Ordinance No. NS-1654 (1982), as amended and updated from time to time, allowing and regulating home occupations through the home occupation permit process, with continued compliance with Assembly Bill (AB) 1616, the California Homemade Food Act of 2012, commonly referred to as the “Cottage Food Law”; and
- b. Ordinance No. NS-2133 (1991), as amended and updated from time to time, allowing and regulating pushcarts to vend food on sidewalks in a safe and responsible manner, the first of its kind in Orange County; and
- c. Executive Order 5-2020 and City Council Resolution No. 2022-055, which authorized outdoor dining in accordance with the “City of Santa Ana: Guide for Outdoor Business Operations” and that allowed for mobile food vending in certain city-owned parking lots; and
- d. Ordinance No. NS-3033 (2022), allowing and regulating outdoor dining on permanently private property, following the sunset of temporary COVID-19 regulations allowing the same; and
- e. Ordinance No. NS-3034 (2022), allowing and regulating mobile food trucks on private property subject to certain standards for time, place, and manner; and

**WHEREAS**, the progressive nature of these policies and programs have cultivated a dynamic, local entrepreneurial climate and promote economic opportunities in the Santa Ana community; and

**WHEREAS**, the presence of multiple disadvantaged, at-risk, and vulnerable communities in Santa Ana, as identified by the General Plan Update of 2022, necessitates the City’s obligation to ensure that food products, including freshly-prepared foods, is safely produced and sold in a manner that does not exacerbate community health concerns; and

**WHEREAS**, the Santa Ana community’s reduced access to healthcare and health services through traditional policy coverage, access to medical clinics, medical professionals, and treatment necessitates the City’s obligation to ensure that food products, including freshly-prepared foods, is safely produced and sold; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:**

**Section 1.** The Recitals set forth above are true and correct.

**Section 2.** In accordance with the California Environmental Quality Act (CEQA), the adoption of this Resolution is not considered a “project” as defined in Section 15378 of the CEQA Guidelines and therefore is exempt from further review.

**Section 3.** The City of Santa Ana affirms its dedication and its priority to protect the health, safety and welfare of its residents, visitors, and business owners in the enforcement of State sidewalk vendor regulations, the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards, and all local regulations pertaining to the use and maintenance of public sidewalks and other pedestrian pathways.

**Section 4.** The City of Santa Ana urges the State Legislature of the State of California to introduce and adopt legislation to amend SB 946 and SB 972 to specifically allow local jurisdictions the right of self-determination to enact local regulations that:

- a. Protect and preserve the health, safety, and welfare of Santa Ana residents, visitors, and business owners; and
- b. Maintain an equitable, diverse, and inclusive business environment in Santa Ana wherein all types of economic activity are subject to equitable regulations that protect the health of employees and consumers; and
- c. Uphold the goals and policies of the Land Use Element and the Economic Prosperity Element of the Santa Ana General Plan; and
- d. Amend Government Code Sections 51036-51039:
  - i. Section 51037(d) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read: Nothing in this chapter shall be construed to affect the applicability of the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.
  - ii. Section 51037(e) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read: Nothing in this chapter shall be construed to affect the ability of a local authority, by ordinance or resolution, to adopt requirements to maintain sanitary conditions upon a public sidewalk or other pedestrian path.

**Section 5.** This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopting this Resolution.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Valerie Amezcua  
Mayor

APPROVED AS TO FORM:  
Sonia R. Carvalho  
City Attorney

By: \_\_\_\_\_  
John M. Funk  
Chief Assistant City Attorney

AYES: Councilmembers \_\_\_\_\_

NOES: Councilmembers \_\_\_\_\_

ABSTAIN: Councilmembers \_\_\_\_\_

NOT PRESENT: Councilmembers \_\_\_\_\_

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Jennifer L. Hall, Clerk of the Council, do hereby attest to and certify the attached Resolution No. 2023 - \_\_\_\_\_ to be the original resolution adopted by the City Council of the City of Santa Ana on \_\_\_\_\_, 2023.

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

\_\_\_\_\_  
Clerk of the Council  
City of Santa Ana