TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Natalie C. Karpeles, Deputy City Attorney

SUBJECT: Consideration and possible action to waive further reading and adopt Ordinance No. 1368 - An Ordinance amending Sections 5.28 and 17.64 of the Bellflower Municipal Code (BMC) regulating sidewalk vending in accordance with Government Code §§ 51036, et seq.

DATE: January 28, 2019

EXECUTIVE SUMMARY

Ordinance No. 1368 was introduced on January 14, 2019. Accordingly, second reading and adoption is recommended. If adopted, the ordinance will take effect in 30 days.

RECOMMENDATION TO CITY COUNCIL

1) Waive further reading and adopt Ordinance No. 1368; or

2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

None

ATTACHMENTS

Ordinance No. 1368 ........................................................................................................ 2
January 14, 2019, Staff Report (Without Attachments) ................................................. 11
THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines as follows:

A. In 2014, the City Council adopted Ordinance No. 1284, which amended the Bellflower Municipal Code to generally prohibit vending, peddling, selling and/or soliciting on public property.


C. Amendments to the BMC implemented by this Ordinance are necessary to create a Sidewalk Vending Program that will provide licensing regulations of street vendors in Bellflower and limit penalties to a specified schedule of fines.

SECTION 2. Factual Findings and Conclusions. The City Council finds that the following facts exist and makes the following conclusions:

A. Based upon documentary information and law enforcement reporting, many sidewalk vendors in the City engage in public nuisances including, without limitation: placing ancillary "vending" items in the public right-of-way (see City Council Staff Report dated October 13, 2014); operating at or near parking lots and driveways (see California Manual on Uniform Traffic Control Devices and California Department of Transportation 2014 Highway Design Manual); and operating in a manner interfering with the normal flow of pedestrian and vehicle traffic (see Planning Commission Study Session Minutes for the August 14, 2014, meeting). Additionally, the City has also received reports regarding sidewalk vendors violating public health regulations governing food service.

B. Street food vending has become an important public health issue and a great concern due to widespread food-borne diseases caused, in part, by food vendors who lack an adequate understanding of basic food safety and food-handling requirements. Major sources contributing to microbial contamination are the place of preparation, utensils for cooking and serving, raw materials, time and temperature of cooked foods and the personal hygiene of vendors (see Food & Drug Administration Employee Health & Personal Hygiene Handbook at https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/IndustryandRegulatoryAssistanceandTrainingResources/UCM194575.pdf. Accessed December 17, 2018).

D. There is a need to regulate the sale of food and merchandise in the public right-of-way to ensure that vendors prepare food safely, and according to the requirements of the Los Angeles County Department of Public Health; to prevent unsanitary conditions; to ensure trash and debris are removed by vendors; and to safeguard pedestrian movement on the sidewalk.

SECTION 3. BMC Chapter 5.28 is amended in its entirety to read as follows:

“Chapter 5.28 Sidewalk Vendors and Solicitors

§ 5.28.010 Purpose.

This Chapter is adopted pursuant to the city’s police powers and Government Code §§ 51036 et seq., including any successor statutes, for the purpose of regulating the sale of food and merchandise in the public right-of-way.

§ 5.28.020 Definitions.

Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this Chapter. Words and phrases undefined in this Code have the same meaning as set forth in Title 8 of the Public Health Code of Los Angeles County as amended by this code.

A. “Certified Farmer’s Market” means a California agricultural product point-of-sale location that is registered under, and operated in accordance with Food and Agriculture Code §§ 47000, et seq.

B. “Charitable organization” means a nonprofit organization, which qualifies under § 501(c)(3) through (14) of the Internal Revenue Code as a charitable organization; has principal offices in or conducted meetings regularly within the city for not less than three years immediately preceding an application for a sidewalk vendor permit; and has a bona fide membership of not less than fifteen members. A charitable organization includes any parent, principal, or master entity.
C. “Junk Food” means any food or beverage that is low in essential nutrients, protein, vitamins or minerals and high in calories, sodium, sugar and fat. Junk Foods include, without limitation, soda, candy, chips, ice cream, hot dogs or processed meat and chocolates.

D. “Pedestrian Path” means a footpath, not adjacent to a road, which is intended for use only by pedestrians, tricycles, strollers or baby carriages.

E. “Special Event” means any parade, athletic event, block party, or public assembly that requires partial or complete street or sidewalk closure to vehicular or pedestrian traffic and use of the street or sidewalk for the event, or any event for which a City-issued permit is required for the temporary use of, or encroachment on, the sidewalk or other public area.

F. “Swap Meet” has the meaning in Business and Professions Code § 21661.

§ 5.28.030 Sidewalk Permit Requirement.

A. Operating as a sidewalk vendor is prohibited without a valid permit issued in accordance with this Chapter. Persons must, in addition to obtaining a permit in this Chapter, comply with all other provisions of this Code.

B. Bona fide charitable organizations are exempt from this chapter and are otherwise regulated pursuant to § 17510, et seq. of the Business and Professions Code.

§ 5.28.040 Applications.

A. Sidewalk vendor permit applications must be made on a form approved by the City Manager, or designee, and accompanied by all information requested on the application, including:

1. The applicant’s full, true name and California Driver’s License, California Identification Card number, or individual taxpayer identification number;
2. Proof of a valid California Department of Tax and Fee Administration seller’s permit;
3. The name, telephone number, current mailing address, and current photograph of the sidewalk vendor;
4. The name and business address of the principal if the sidewalk vendor is an agent of an individual, company, partnership or corporation;
5. A complete description of the food or merchandise offered for sale or exchange. Any applicant who intends to sell food must also provide proof of either a Food Handler Card or Certified Food Protection Manager certificate, where applicable, pursuant to Health and Safety Code §§ 113700-114437, and certify that the pushcart, stand, display, pedal-driven cart, wagon,
showcase, rack, or other nonmotorized conveyance used has been approved by the County Health Department for that particular type of food;
6. The address of the location or proposed route where the sidewalk vendor is proposed to operate;
7. Proof of liability insurance; and
8. A complete description of any ancillary items that the applicant intends to use in conjunction with sales including, without limitation, small tables, trash receptacles, chairs, umbrellas and umbrella stands, or other similar items.

B. Each application must be accompanied by an application fee, the amount of which will be set by City Council resolution. Such application fee is solely to reimburse the City for costs incurred as a result of processing a permit application.

C. Completed applications must be submitted to the City Manager, or designee. Only complete applications will be considered. An application is complete if it includes all required information together with full payment of the application fee. Applications will be considered in the order they are received. The City may require supplemental information from any applicant before deeming an application complete. If supplemental information is requested, it must be provided to the City Manager, or designee, within seven business days of the request.

D. The City may reject or deny any or all applications. The City may request and obtain supplemental information from any applicant before making a decision on the application.

E. Applicants must agree to abide by the operational requirements stated in Section 5.28.050.

F. Sidewalk vendors cannot be permitted as a permanent or proprietary location in any property within the City.

G. The City Manager’s decision with respect to a sidewalk vendor permit application may be appealed to the City Council pursuant to this title.

§ 5.28.050 Operating Requirements.

A. The sidewalk vending permit is valid for 12 months after being issued unless revoked or suspended, and may be renewed early, before expiration. Sidewalk vending permits are issued to persons, not pushcarts, wagons, or other nonmotorized conveyances. Sidewalk vending permits are nontransferable.

B. Sidewalk vendors must maintain a clearance of not less than four feet (48-inches) upon every sidewalk or pedestrian path in order to comply with the Americans with Disabilities Act;
C. When necessary, stationary sidewalk vendors must provide a trash receptacle and recycling container for customers’ proper disposal of customer trash during the sidewalk vendor’s hours of operation. A sidewalk vendor may not dispose of customer trash in existing receptacles provided by the City;

D. Sidewalk vendors must keep the area around them clean and free of trash (no less than a 300-foot radius) during the sidewalk vendor’s hours of operation and must pick up and properly discard any trash associated with their activities before leaving the area upon termination of the day’s activities;

E. All applicable permits must be displayed in plain view at all times;

F. No pushcart, stand, display, pedal-driven cart, wagon, showcase, rack or other nonmotorized conveyance, or ancillary vending items or equipment may be left unattended or chained or fastened to any pole, sign, tree or other object in the public right of way. Any pushcart, stand, display, pedal-driven cart, wagon, showcase, rack or other nonmotorized conveyance in violation of this subsection will be confiscated;

G. Merchandise may not be placed directly onto the public right-of-way without a permit authorizing such placement;

H. Sidewalk vendors may not offer junk food within 500 feet of any K-12 school between the hours of 6:00 am and 6:00 pm;

I. Sidewalk vendors may not operate within 500 feet of a certified farmer’s market, swap meet, or area designated for a special event, during their limited duration. The City Council may determine special events as allowed under this Code. The City Council may also designate which types of vendors, peddlers, sellers or solicitors will be allowed to participate in these special events;

J. Sidewalk vendors may not offer services or any illegal or counterfeit merchandise;

K. Stationary sidewalk vendors may not operate in any of the City’s residential zones;

L. Stationary sidewalk vendors may not operate within Thompson Park, Caruthers Park, or any other city-owned park with an operative agreement between the city and a concessionaire for the exclusive sale of food or merchandise by the concessionaire.
M. Any stationary sidewalk vendor that stores, prepares, packages, serves, vends, or otherwise provides food must be operated within 200 feet of an approved and readily available toilet and handwashing facility whenever the stationary sidewalk vendor is stopped to conduct business for more than a one-hour period, per §114315 of the Health and Safety Code.

N. Sidewalk vendors may not operate vending tricycles, icicle trikes, bicycle vending carts or the like, in any City park.

O. Sidewalk vendors may not operate:
   1. Within 15 feet of an intersection;
   2. Within 10 feet of a driveway;
   3. Within 5 feet of any alleyway;
   4. Within 5 feet of any fire hydrant, fire call box or other emergency facility;
   5. Within a marked bus zone;
   6. Within 18 inches from the edge of the curb;
   7. Where placement impedes the flow of pedestrian traffic by reducing the clear space to less than 6 feet, or impedes egress from, access to or the use of abutting property; or
   8. Within 25 feet of the entrance or exit to any building.

§ 5.28.060 Revocation or Suspension of Permit.

A. Whenever any person fails to comply with any provision of this Chapter, or any rule or regulation adopted pursuant hereto, or with any other provision or requirement of law, including, but not limited to, this Code or any grounds that would warrant the denial of initial issuance of a permit hereunder, the City Manager or his or her designee, after giving such person 10 days' notice in writing to the address stated on the application and specifying the time and place of hearing and requiring him/her to show cause why his/her permit should not be revoked, will conduct a hearing. If permit violations are shown by substantial evidence, the City may revoke or suspend any permit. The City will not issue a new permit after the revocation of a permit unless it is satisfied that the applicant will thereafter comply with all provisions of this Chapter and the rules and regulations adopted thereunder and all other applicable provisions of law, and until the City collects a fee in an amount sufficient to recover the actual costs of processing the re-application.

B. The City Manager or designee will provide the permittee with written notice of the revocation by certified mail addressed to the permittee’s address.
§ 5.28.070 Violations and Penalties.

A. Any violation of this chapter is deemed to be a public nuisance and each day such condition continues will be regarded as a new and separate offense. Violations of this Chapter will be subject to administrative penalties administered pursuant to Chapter 1.12 of this Code.

B. Any person engaged in sidewalk vending, solicitation or peddling must prominently display all permits required by this Chapter.

C. Fines imposed by this chapter will be as follows:
   1. An administrative fine of $100 for a first violation;
   2. An administrative fine of $200 for a second violation within one year of the first violation; and
   3. An administrative fine of $500 for a third or subsequent violation within one year of the first violation. Alternatively, the City may revoke the permit issued upon a fourth or subsequent violation.

D. When assessing an administrative fine, the City must take into consideration the violator’s ability to pay the fine. In doing so, the City may allow the violator to complete community service in lieu of paying the total administrative fine, waive the fine, or offer an alternative disposition. If either of the following are true, the violator may remit to the City 20% of the administrative fine imposed:
   1. The violator is receiving public benefits under one or more of the following programs: (i) Supplemental Security Income (SSI) and State Supplementary Payment (SSP); (ii) California Work Opportunity and Responsibility to Kids Act (CalWORKs) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program; (iii) Supplemental Nutrition Assistance Program or the California Food Assistance Program; (iv) County Relief, General Relief (GR), or General Assistance (GA); (v) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants; (vi) In-Home Supportive Services (IHSS); or (vii) Medi-Cal; or
   2. The violator’s monthly income is 125 percent or less of the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

E. Any fine required to be paid under the provisions of this chapter is a debt owed by the vendor to the city. Any person owing money to the city under the provisions of this chapter is liable to an action brought in the name of the city for the recovery of such amount.
SECTION 4. BMC § 17.64.030(A) is amended to read as follows:

“A. There will be no retail sales or commercial recreation except as authorized by Conditional Use Permit pursuant to Section 17.64.040 or sidewalk vendor permit pursuant to Chapter 5.28, except that retail sales of Christmas trees may be carried on between December 1 and December 30 of a calendar year.”

SECTION 5. Environmental Assessment. The City Council finds that the Ordinance is not subject to review under the California Environmental Quality Act (“CEQA”) under CEQA Guidelines §15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment. Adopting this Ordinance will not have the effect of deleting or substantially changing any regulatory standards or required findings. This Ordinance would not result in any development or changes to the physical environment. Following an evaluation of possible adverse impacts, it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.

SECTION 6. Construction. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council’s intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 7. Enforceability. Repeal of any provision of the BMC does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance’s effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 8. Validity of Previous Code Sections. If the entire Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal of the BMC or other regulation by this Ordinance will be rendered void and cause such BMC provision or other regulation to remain in full force and effect for all purposes.

SECTION 9. Reliance on Record. Each and every one of the findings and determinations in this Ordinance are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 10. Limitations. The City Council’s analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the City Council’s lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions. Somewhat related to this are limitations on the City’s ability to solve what are in effect regional, state, and National problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.
SECTION 11. Preservation. Repeal or amendment of any previous Code Sections does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance’s effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 12. Severability. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provision or application and, to this end, the provisions of this Ordinance are severable.

SECTION 13. The City Clerk, or her duly appointed deputy, is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Bellflower’s book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 14. Effective Date. This Ordinance will become effective on the 30th day following its passage and adoption.


Sonny R. Santa Ines, Mayor

ATTEST:

Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, City Attorney
TO: Honorable Mayor and Members of the City Council
ATTENTION: Jeffrey L. Stewart, City Manager
FROM: Natalie C. Karpeles, Deputy City Attorney
SUBJECT: Consideration and possible action to read by title only, waive further reading, and introduce Ordinance No. 1368 – An Ordinance amending Sections 5.28 and 17.64 of the Bellflower Municipal Code (BMC) regulating sidewalk vending in accordance with Government Code §§ 51306, et seq.

DATE: January 14, 2019

EXECUTIVE SUMMARY

The Bellflower Municipal Code (“BMC”) currently prohibits vending, peddling, selling, and soliciting on public property. Government Code §§ 51036, et seq., became effective on January 1, 2019. Among other things, the new law decriminalizes sidewalk vending. Staff recommends that the City Council amend the BMC to comply with the new law by adopting regulations governing sidewalk vending.

RECOMMENDATION TO CITY COUNCIL

1) Read by title only, waive further reading, and introduce Ordinance No. 1368; or
2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

There are no anticipated fiscal impacts associated with the proposed action. Second reading and adoption would occur on January 28, 2019.

DISCUSSION

I. History

The City first adopted its street vendor regulations in 1968. Ordinance No. 1284 was subsequently adopted on October 27, 2014 and amended the BMC to generally prohibit food vendor carts in the public right-of-way.
DISCUSSION - Continued

II. Government Code §§ 51036, et seq.

Government Code §§ 51036, et seq. decriminalizes sidewalk vending and establishes various requirements for local regulation of sidewalk vendors.¹ Should the City decide to create a permitting program to regulate sidewalk vendors under Government Code §§ 51036, et seq., its provisions must substantially comply with the requirements outlined therein and may only implement restrictions that are objectively related to health, safety or welfare concerns.²

III. Proposed Amendments to Chapter 5.28

Staff identified the following health, safety, and welfare concerns related to sidewalk vending:

- Vendors placing ancillary “vending” items in the public right-of-way (such as chairs, umbrellas, or tables in order to create make-shift outdoor dining areas for patrons);
- Vendors operating at or near parking lots and driveways (which creates a safety hazard for children and which also obstructs adequate sightlines for drivers);
- Vendors operating in a manner interfering with the normal flow of pedestrian and vehicle traffic (such as operating in close proximity to building entrances/exits, where number of vendor patrons creates congestion, or operating in close proximity to a red-painted curb or where parking is inadequate to accommodate vending in that particular location); and
- Vendors violating public health regulations governing food service (such as serving food without proper refrigeration or utilizing equipment that is not meant for food preparation or serving food without observing basic hygiene practices and adequate food-handling techniques).

The following additional requirements (included in BMC § 5.28.050 of the draft ordinance) are related to objective health, safety or welfare concerns:

- Require that vendors obtain a vending license and permit from the City, and that they provide identifying information on the applications;
- Require that vendors provide liability insurance;
- Require that vendors obtain a permit for any ancillary items that will be placed in the public right-of-way;
- Require that vendors provide proof of either a Food Handler Card or Certified Food Protection Manager certificate for themselves and the conveyance they will be vending from;

¹ These sections do not impact the City’s regulation of food trucks and charitable solicitations, nor do they impact the State’s Retail Food Code.
² The Government Code specifically provides that “perceived community animus or economic competition” do not fit these criteria.
DISCUSSION – Continued

- Require stationary vendors to provide trash receptacles and recycling containers to eliminate littering;
- Prohibit vendors from offering junk food within 500 feet of any K-12 school between the hours of 6:00 am and 6:00 pm; and
- Prohibit vending within designated distances from building entrances, parking lots, driveway aprons, intersections, and emergency infrastructure (e.g., fire hydrants, red curbs).

IV. Other Concerns

The BMC currently includes regulations governing charitable and religious solicitations – and requires persons engaging in charitable and religious solicitations to obtain a permit from the City Manager. Exemptions from this requirement include (1) groups that are soliciting from their own members; (2) the Red Cross; (3) Community Chest; (4) the Chamber of Commerce; and (5) “such other organizations who, after notice and hearing before the City Council, are declared to be exempt....” These regulations were adopted in 1968 and have not substantially changed.

In 2002, the United States Supreme Court held that regulation of noncommercial solicitation may violate the First Amendment. Indeed, the Supreme Court has clearly established that collecting funds for charitable, political or religious purposes involves a variety of speech interests and is therefore protected by the First Amendment. Accordingly, the City may only regulate charitable street vending where its regulations are content-neutral, are narrowly tailored to achieve a significant government interest, and allow ample alternative channels of communication.

Staff recommends omitting specific reference to “noncommercial” solicitations and allowing this conduct to be regulated pursuant to state law – as recommended in the proposed Ordinance. (Alternatively, the City Council may enact an ordinance which provides for disclosure of information relating to solicitations or sales for charitable purposes substantially similar to the disclosure requirements of state law.)

ATTACHMENT

Ordinance No. 1368

---