

**ORDINANCE NO. 2019-470**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG BEAR LAKE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ADDING CHAPTER 12.64 TO THE BIG BEAR LAKE MUNICIPAL CODE, IMPOSING REGULATIONS ON SIDEWALK VENDING IN COMPLIANCE WITH SENATE BILL 946**

**WHEREAS**, the City of Big Bear Lake, 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 of Big Bear Lake wishes to regulate sidewalk vending; and

**WHEREAS**, in 2018, the California Legislature passed SB 946 which prohibits cities from regulating sidewalk vending, except in accordance with the provisions of SB 946; and

**WHEREAS**, SB 946 applies to both charter and general law cities; and

**WHEREAS**, SB 946 authorizes the implementation of regulations that are directly related to objective health, safety, or welfare concerns, and that do not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified; and

**WHEREAS**, permit requirements are consistent with SB 946, as they are reasonable, are related to objective health, safety, and welfare concerns, and are based upon compliance with other generally applicable laws including the Americans with Disabilities Act and the City’s general Encroachment Permit requirements for work and/or activities in the public rights of way; and

**WHEREAS**, requirements for sidewalk vending requiring a minimum path of accessible travel are necessary to comply with the Americans with Disabilities Act and maintain minimum access along public sidewalks; and

**WHEREAS**, requirements for maintaining access to building entrances, and not blocking driveways, parking areas and building storefront windows are necessary to guard the health and safety of patrons, drivers, vendors and existing brick and mortar business owners; and

**WHEREAS**, the City Council finds and determines that the installation, repair, maintenance, and removal of encroachments in the public way must be regulated in order to protect the public health, safety, and welfare and to provide for the orderly administration and maintenance of the public way for the benefit of the community, while at the same time allowing reasonable accommodation and cooperative flexibility for providing necessary utility and other convenience services to the community; and

**WHEREAS**, the City Council finds that public and private persons who install encroachments in the public way bear a responsibility to help preserve the public way and to contribute to the administrative costs incurred by the community because of such encroachments; and

**WHEREAS**, the City Council finds that, unless properly regulated, sidewalk vendors pose a unique risk to the health, safety, and welfare of the public due to the inherent risks associated with sidewalk vending, including, but not limited to, impacts to traffic, pedestrian safety, zoning concerns, mobility, unsanitary conditions involving food preparation, risks to children, and consumer protection; and

**WHEREAS**, the inherent nature of sidewalk vending and the ability of such vendors to be located on private property and public streets and move quickly from place to place in the community, including near parks, schools, and other places frequented by children, warrants imposing certain regulatory measures, including requiring background checks, to protect the health, safety, and welfare of the community; and

**WHEREAS**, SB 946 continues to authorize cities to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by a city; 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 SB 946.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BIG BEAR LAKE DOES ORDAIN AS FOLLOWS:**

**SECTION 1:** The recitals set forth above are true and correct and are hereby adopted as findings in support of this Ordinance as if fully set forth herein.

**SECTION 2:** Chapter 12.64 is hereby added to the Big Bear Lake Municipal Code to read as follows:

**“Chapter 12.64 – SIDEWALK VENDING.**

**Section 12.64.010. Purpose.**

The City finds that the vending of prepared or pre-packaged foods, goods, and/or wares at semi-permanent locations on public sidewalks and rights-of-way may pose unsafe conditions and special dangers to the public health, safety, and welfare of residents and visitors. The purpose of this Chapter is to implement regulations on both roaming and stationary sidewalk vending that protect the public health, safety, and welfare of the community while complying with the requirements of SB 946 to promote safe vending practices, prevent safety, traffic, and health hazards, and preserve the public peace, safety, and welfare of the community.

**Section 12.64.020. Definitions.**

For purposes of this Chapter, the following definitions apply:

- A. “City” means the City of Big Bear Lake.
- B. “Sidewalk vendor or vending” means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.
- C. “Roaming sidewalk vendor or vending” means a sidewalk vendor who moves from place to place and stops only to complete a transaction.
- D. “Special Event Permit” means a permit issued pursuant to Chapter 17.13 of the Big Bear Lake Municipal Code.
- E. “Park” shall mean any park, reservation, picnic-ground, playground, beach, promenade, dog park, recreation center, ice arena, pool, sports field, sports court, sports arena, field, skateboard park, bike park, public trail, open space or any other area owned or controlled by the City, or any other governmental entity, and devoted to active or passive recreation.
- F. “Certified Famers’ Market” means a location operated in accordance with Chapter 0.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter.
- G. “Swap Meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

**Section 12.64.030. Permits Required.**

- A. All sidewalk vendors shall obtain a sidewalk vending permit prior to engaging in any sidewalk vending activities. The following information shall be required:
1. Name, current mailing address, and phone number of the vendor; and
  2. If the vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal; and
  3. A description of the merchandise to be offered for sale; and
  4. A copy of the California seller’s permit with the sales tax number issued by the California Department of Tax and Fee Administration to the vendor; and
  5. The vendor’s social security card with the number; or the vendor’s valid California Driver’s license; or the individual taxpayer identification number issued to the vendor; or a municipal identification number. Any such identification number(s) or license(s) shall be presented to a City staff member who shall verify the authenticity of the document and record on the vendor’s application that the vendor presented the required document(s).
  6. If preparing or selling food, a copy of a valid Health Permit issued by the County of San Bernardino, a current decal sticker posted on the cart or other means of nonmotorized conveyance, and a current San Bernardino County food handlers card for all employees handling food on the cart or other means of nonmotorized conveyance; and

7. If the vendor proposes to be a sidewalk vendor, a description or site plan map of the proposed location(s) where vending will take place, showing that the sidewalk location maintains a minimum of thirty-six inches (36") of accessible route area, in compliance with the Americans with Disabilities Act; and
8. A description of the types of goods or services to be sold, the days/hours of sales; and
9. A copy of the vendor's general liability policy.

B. Prior to the issuance of a sidewalk vendor permit, the applicant shall cause to be filed with the City Manager or his/her designee a LiveScan background check conducted by the California Department of Justice within the previous six (6) months of the application date. The Chief of Police shall furnish each applicant with a LiveScan request form for use at any LiveScan vendor location.

C. At the time the application or renewal application is filed, the applicant shall pay the business license fee as established by resolution of the City Council as set forth in Section 5.02.220 of the Municipal Code.

**Section 12.64.040. Review of Permit Application; Decision.**

A. Upon acceptance of a properly filed sidewalk vendor permit application and receipt of an acceptable LiveScan report issued by the Department of Justice, the City Manager or his/her designee shall conduct a preliminary investigation to determine compliance with this Chapter and shall make such determination within no more than thirty (30) days of acceptance to approve or deny the application. The City Manager or his/her designee shall provide the applicant with written notice of his or her decision to the address indicated in the application.

B. The City Manager or his/her designee may deny an application for a permit if he or she makes any of the following findings:

1. The applicant has failed to pay the application permit fee.
2. The applicant has made one or more material misstatements in the application for a permit.
3. The applicant does not have a valid social security card or valid California Driver's license; or valid individual taxpayer identification number; or a municipal identification number.
4. The applicant's vending operation, as described in the application, is inconsistent with the standards, conditions, and requirements of this Chapter.
5. The applicant is required to register under the provisions of California Penal Code section 290.
6. Within three (3) years of the date of the application, the applicant has been convicted in a court of competent jurisdiction or pled nolo contendere to any felony offense involving the sale of a controlled substance specified in California Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058, or at the time of application is on probation or parole for any offenses

set forth in this section for an offense that was committed within three (3) years of the date of the application.

C. If the application is denied, the reasons for disapproval shall be noted on the application, and the applicant shall be notified that his or her application is denied and that no permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form.

D. If the City Manager or his/her designee approves the applicant's permit, he or she shall endorse his or her approval on the application and shall, upon payment of the prescribed fee, deliver the permit to the applicant.

E. Exemptions. A sidewalk vending permit shall not be required for the following activities:

1. The sale of agriculture products on the site where the product is grown.
2. Catering for private parties held exclusively on private property and not open to the general public.
3. Events permitted pursuant to a lawfully issued special event permit including but not limited to a Certified Farmers' Market, Swap Meet, street fairs, outdoor concerts, sport league opening day, and business sidewalk sales.

F. Term of permit. A sidewalk vending permit issued pursuant to this Chapter shall automatically expire one (1) year from the date issued, unless an earlier expiration date is noted on the permit.

G. Transferability. A sidewalk vending permit shall not be transferable to any other entity or person and is valid only as to the original applicant.

**Section 12.64.050. Stationary Sidewalk Vending Locations and Standards.**

A. Stationary sidewalk vendors shall be prohibited from operating or establishing in any residential zone of the City, including the R-L, R-1, and R-3 residential zones.

B. Stationary sidewalk vendors may operate in non-residential zones of the City, including mixed use zones, provided they meet the following:

1. The sidewalk vendor is duly licensed and meets all requirements of section 12.64.030; and
2. The sidewalk vendor can set up their vending operation while still leaving a minimum of thirty-six inches (36") of accessible path of travel, without obstruction, along the public sidewalk or public pathway; and
3. Sidewalk vending hours shall be conducted between the hours of 10 A.M. and 7 P.M. of every day; however, if other businesses or uses are permitted to operate before or after the aforementioned times, sidewalk vending hours

- shall conform with the time restrictions imposed on said other businesses or uses permitted on that street; and
4. The sidewalk vendor maintains the vending area in a clean, orderly, and sanitary condition; and
  5. The sidewalk vendor location does not block entrances to private buildings, private driveways, parking spaces or building windows; and
  6. No vending shall occur within ten (10) feet of a fire hydrant, fire escape, bus stop, loading zone, handicapped parking space or access ramp, fire station driveway, or police station driveway; and
  7. No tables, chairs, fences, shade structures, other site furniture, or any freestanding signs shall be permitted in conjunction with the vendors vending activities; and
  8. The vendor shall not attach or use any water lines, electrical lines, or gas lines during vending operations; and
  9. Exterior storage or display of refuse, equipment, materials, goods, wares, or merchandise associated with the vendor is prohibited; and
  10. No vending shall occur within the immediate vicinity of an event held pursuant to a Special Event Permit.

**Section 12.64.060. Sidewalk Vending in Parks.**

A. Sidewalk vending of food or merchandise by mobile or stationary vendors shall be prohibited in any City Park with a concession stand operated by a vendor under exclusive contract with the City selling similar food or merchandise.

B. Sidewalk vendors may operate in City Parks provided they meet the following:

1. The sidewalk vendor is duly licensed and meets all requirements of section 12.64.030; and
2. For stationary sidewalk vending, the sidewalk vendor can set up their vending operation while still leaving a minimum of thirty-six inches (36") of accessible path of travel, without obstruction, along the public sidewalk or public pathway; and
3. The sidewalk vendor shall cease operations one (1) hour prior to the close of the park; and
4. The sidewalk vendor maintains the vending area in a clean, orderly, and sanitary condition; and
5. The sidewalk vendor location does not block entrances to buildings, driveways, parking spaces, or building windows; and
6. No vending shall occur within the immediate vicinity of an event held pursuant to a Special Event Permit.

**Section 12.64.070. Roaming Sidewalk Vending.**

A. Roaming sidewalk vendors shall meet the following:

1. The sidewalk vendor is duly licensed and meets all requirements of section 12.64.030; and
2. Sidewalk vending hours for residential zones shall be conducted between the hours of 10 AM and 7 PM; and
3. Sidewalk vending hours for non-residential zones Sidewalk vending hours shall be conducted between the hours of 8 A.M. and 10 P.M. of every day; however, if other businesses or uses are permitted to operate before or after the aforementioned times, sidewalk vending hours shall conform with the time restrictions imposed on said other businesses or uses permitted on that street; and
4. The sidewalk vendor maintains their temporary vending area in a clean, orderly, and sanitary condition; and
5. The sidewalk vendor does not block entrances to buildings, driveways, parking spaces, or building windows; and
6. The sidewalk vendor does not conduct sales from a public street.
7. No vending shall occur within the immediate vicinity of an event held pursuant to a Special Event Permit.

**Section 12.64.080. Suspension; Revocation.**

A. A sidewalk vendor permit issued under this Chapter may be suspended or revoked by the City Manager or his/her designee for any of the following causes:

1. Fraud or misrepresentation in the course of vending;
2. Fraud or misrepresentation in the application for the permit;
3. Repeated vending in violation of this Chapter; or
4. Vending in a manner that creates a public nuisance or constitutes a danger to the public.

B. Notice of the suspension or revocation of a sidewalk vendor permit issued under this Chapter shall be mailed, postage prepaid, to the holder of the sidewalk vendor permit at his or her last known address.

**Section 12.64.090. Appeals to City Manager.**

In the event that any applicant or permittee desires to appeal from any order, revocation, or other ruling of the City Manager or his/her designee made under the provisions of this Chapter, such applicant or any other person aggrieved shall have the right to appeal such action or decision to the City Council within fifteen (15) days after the notice of the action or decision has been mailed to the person's address as shown on the permit application. An appeal shall be taken by filing with the City Manager or his/her designee office a written appeal statement setting forth the grounds for the appeal. The City Clerk shall transmit the written statement to the City Council within ten (10) days of its filing and the City Manager shall set a time and place for a hearing on appeal. A hearing shall be set not later than sixty (60) days from the date of filing of the applicant's written appeal statement with the City Clerk's office. Notice of the time and place of the hearing shall be given to the appellant in the same manner as provided for the mailing of notice of suspension or

revocation at least five (5) days prior to the date set for the hearing. The decision of the City Council on the appeal shall be final and binding on all parties concerned.

**Section 12.64.100. Penalties.**

A. It is unlawful for any person to violate any provision or fail to comply with any requirements of this Chapter. A violation of this Chapter shall be punished by:

1. An administrative fine not exceeding \$100 for a first violation.
2. An administrative fine not exceeding \$200 for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding \$500 for each additional violation within one (1) year of the first violation.
4. Rescinding the vending permit issued to the vendor for the remaining term of that permit upon the fourth violation or subsequent violations.

B. A violation of vending without a sidewalk vending permit, may, in lieu of the penalties set forth in subsection (A), set forth above, be punished by:

1. An administrative fine not exceeding two hundred fifty (\$250) dollars for a first violation.
2. An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one (1) year of the first violation.

C. If an individual is subject to subsection (B), set forth above, for vending without a sidewalk vending permit, upon the individual providing proof of a valid permit issued by the City, the administrative fines set forth in this Chapter shall be reduced to the administrative fines set forth in subsection (A), respectively.

D. The proceeds of any administrative fines assessed pursuant to this Chapter shall be deposited in the treasury of the City.

E. Failure to pay an administrative fine assessed under this Chapter shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in this Chapter shall not be assessed.

F. Any violation of this Chapter shall not be punishable as an infraction or misdemeanor, and any person alleged to have violated any provisions of this Chapter shall not be subject to arrest except when otherwise permitted under law.

G. When assessing an administrative fine pursuant to this Chapter, the adjudicator shall take into consideration the person's ability to pay the fine. The City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may



request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

1. If the person meets the criteria described in subdivision (a) or (b) of Government Code section 68632, the City shall accept, in full satisfaction, twenty (20) percent of the administrative fine imposed pursuant to this Chapter.
2. The City may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

H. A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under SB 946 had SB 946 been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.”

**SECTION 3.** Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council of the City of Big Bear hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**SECTION 4.** This Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines, as it is not a “project” and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. 14 Cal. Code Regs. § 15378. The Director of Community Services shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

**SECTION 5.** Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

**SECTION 6.** Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City.

ORDINANCE PASSED AND APPROVED on this 13<sup>th</sup> day of May, 2019 by the following vote.

AYES: Herrick, Caretto, Putz  
NOES: None  
ABSTAIN: None  
ABSENT: Jackowski, Jahn



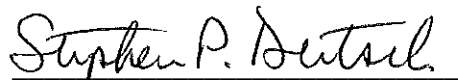
Randall Putz, Mayor

ATTEST:



Erica Stephenson, City Clerk

APPROVED AS TO FORM:



Stephen P. Deitsch, City Attorney

STATE OF CALIFORNIA                    )  
COUNTY OF SAN BERNARDINO    ) ss  
CITY OF BIG BEAR LAKE            )

I, Erica Stephenson, City Clerk of the City of Big Bear Lake, California, do hereby certify that the whole number of the City Council of the said City is five; that the foregoing Ordinance No. 2019-470 is a full, true and correct original of Ordinance No. 2019-470 of the City of Big Bear Lake, entitled:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG BEAR LAKE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ADDING CHAPTER 12.64 TO THE BIG BEAR LAKE MUNICIPAL CODE, IMPOSING REGULATIONS ON SIDEWALK VENDING IN COMPLIANCE WITH SENATE BILL 946**

was duly passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the City Clerk of said City, all at a regular meeting of said Council on the 13<sup>th</sup> day of May, 2019, and that the same was so passed and adopted by the following vote:

AYES:            Herrick, Caretto, Putz  
NOES:            None  
ABSTAIN:       None  
ABSENT:         Jackowski, Jahn

I do hereby further certify that pursuant to the provisions of Section 36933 of the Government Code of the State of California that the foregoing Ordinance No. 2019-470 was duly and regularly published according to law and the order of the City Council and circulated within said City.

  
Erica Stephenson, City Clerk