ORDINANCE NO. 1800

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING LODI MUNICIPAL CODE TITLE 9 – PUBLIC PEACE, MORALS, AND WELFARE – CHAPTER 9.18, "VENDING ON STREETS AND SIDEWALKS," BY REPEALING AND REENACTING CHAPTER 9.18, "VENDING ON STREETS, SIDEWALKS, AND PRIVATE PROPERTY"

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NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Lodi Municipal Code (LMC) Title 9 – Public Peace, Morals, and Welfare – Chapter 9.18, "Vending on Streets and Sidewalks," is hereby repealed and reenacted to read as follows:

Chapter 9.18 VENDING ON STREETS, SIDEWALKS, AND PRIVATE PROPERTY

9.18.010 Declaration of Purpose

The City Council expressly finds that the vending of produce and prepared or prepackaged foods, goods, wares, and/or services on public streets, sidewalks, or alleys and on private property pose unsafe conditions and special dangers to the public health, safety, and welfare of the residents of the City of Lodi. It is the purpose and intent of the City Council, in enacting this Chapter, to provide those persons who engage in those types of vending operations with clear and concise regulations to prevent safety, traffic, and health hazards, as well as to preserve the peace, safety, and welfare of the community.

9.18.020 Definitions

A. "Business Owner" shall mean any person, firm, or corporation, which owns or controls any interest in any business engaged in vending as defined in Subsection H hereof.

B. "Commissary" shall mean a food establishment in which food, containers, equipment, or supplies are stored or handled for use in Motorized Food Wagons or Conveyance.

C. "Conveyance," as used in this Chapter, means any vehicle (except Motorized Food Wagons, as defined below), trailer, cart, wagon, or stand, with or without wheels, which may be moved from one place to another under its own power or by other means.

D. "Linear Frontage" is the method used to determine distances as used in this Chapter.

E. "Mobile Food Vendor" shall mean any person as defined in this Chapter, who owns, controls, manages, and/or leases a Motorized Food Wagon or Conveyance; and/or contracts with a person(s) to drive, operate, prepare foods, and/or vend from a Motorized Food Wagon or Conveyance.

F. "Motorized Food Wagon" shall mean any vehicle as defined in Section 670 of the California Vehicle Code, which is equipped and used for retail sales of prepared, pre-packaged, or unprepared, unpackaged food or foodstuffs of any kind on any public street, alley, highway, or private street, alley, or property within the City of Lodi. For the purposes of this Chapter, a Motorized Food Wagon shall also include any trailer or wagon pulled by a vehicle.

G. "Persons" shall mean any person, firm, partnership, association, or corporation, and includes, but is not limited to, owners, operators, drivers, lessors, and lessees of Motorized Food Wagons and Conveyances.

H. "Vend" or "Vending" shall mean the sale of any goods, wares, merchandise, prepared, pre-packaged, or unprepared, unpackaged food or foodstuffs of any kind from private or public property. Vending from a Motorized Food Wagon generally has the following characteristics:

1. Food is ordered and served from a take-out counter that is integral to the Motorized Food Wagon and there is typically a space for customer queuing;
2. Food is paid for prior to consumption;
3. Food and beverages are served in disposable wrappers, plates, or containers; and
4. Food and beverages are prepared and sold for off-site consumption.

Vending from a Conveyance generally has the following characteristics:

1. Food is paid for prior to consumption;
2. Food and beverages are served in disposable wrappers, plates, or containers; and
3. Food and beverages are prepared and sold for off-site consumption.

I. "Vendor"/"Operator" shall mean any person who sells and makes immediate delivery, or offers for sale and immediate delivery, any goods, wares, or merchandise, or drives, operates, vends, and/or prepares food on or from a Motorized Food Wagon or Conveyance.

9.18.030 Regulation of Sales

It shall be unlawful for any person to Vend, or attempt to engage in Vending or operate any vehicle or conduct any business for the purpose of Vending from any vehicle, Motorized Food Wagon, or Conveyance parked, stopped, or standing upon any public street, alley, highway, or property, or private street, alley, or property within the City of Lodi except in accordance with all applicable provisions of this Code.

9.18.040 Permit to Operate

A person desiring to engage in a vendor operation, as defined by this Chapter, shall submit a written application for a Permit to Operate in a form acceptable to and with all supporting information required by the City of Lodi. Such application shall be accompanied by a non-refundable, non-transferable application fee in an amount as may be established by Resolution of the City Council. Any such permit shall be required to be renewed annually and a separate non-refundable, non-transferable application fee shall be paid annually for such renewal application. Vendors must have the permit in their possession when vending. There must be at least one Vendor with a valid permit present whenever Vending is taking place.

A. A Vendor must obtain a background check in accordance with the requirements of Section 9.16.030 of this Code.

B. Every Vendor shall obtain a City of Lodi Business Tax Certification.

C. As part of the Permit to Operate application, the Vendor or Business Owner shall provide the following:

1. Proof of current vehicle registration and a copy of an applicable vehicle insurance policy for any vehicles used in the vending activity.

2. Four photographs (showing different exterior views) of each Motorized Food Wagon or Conveyance.

3. A copy of a current San Joaquin County Environmental Health permit for any food service vending operation.

4. A copy of the Vendor or Business Owner's current Business Tax Certification and applicable Board of Equalization Seller's Permit.

5. For Mobile Food Vendors, Business Owners must show proof of payment to a Commissary for the prior twelve (12) months for all cases involving the reissuance of a Permit; and proof of current payment for new Vendors.

6. If the Vendor is operating on private property, the Business Owner shall provide the following:

a. an affidavit in a form approved by the City from the property owner (if other than self) permitting the Vendor to locate on the site;

b. a Site Plan, drawn to scale and with dimensions, indicating the location of all existing buildings, structures, driveways, parking spaces, traffic controls, and improvements, and the location or areas where the proposed Vending activity, structures, and improvements related to the Vending activity will be located upon the site; and

c. in the case of Mobile Food Vendors, an affidavit from the business or location providing the required restroom facilities for food service workers, stating the hours that those facilities are being made available to the Mobile Food Vendor.

D. The following may constitute grounds for denial of a Permit to Operate:

1. The Vending operation or activity as proposed by the applicant does not comply with all applicable laws including, but not limited to, the applicable building, zoning, housing, fire, safety, and health regulations under State law and this Code;

2. The applicant is unable to obtain the required Peddler's license, pursuant to LMC Section 9.16.030 due to a criminal background check;

3. The applicant has, within three (3) years immediately preceding the date of filing of the Application, had a Permit to Operate, Peddler's License, or related permit, which was issued within the State of California, suspended or revoked;

4. The applicant has knowingly made a material misstatement in the Application for a Permit to Operate;

5. There have been excessive calls for service to the Lodi Police Department within the twelve (12) months preceding the Application with inadequate response by the Vendor or Business Owners or operators, involving the commission of crimes, disturbances, public nuisances, or applicable LMC violation investigations, which are located, committed, or generated on the premises of the Vending operation.

6. Failure to obtain clearance from San Joaquin County Environmental Health.

E. As an alternative to a denial of a Permit to Operate for failure to meet the requirements of this Chapter, the City Manager or designee may issue a Conditional Permit to Operate. Said Conditional Permit to Operate shall be issued with conditions imposed on the operation of the premises. All conditions shall be complied with in order to maintain the Conditional Permit to Operate in a valid status. Failure to comply with the imposed conditions will subject the Conditional Permit to Operate to suspension and/or revocation procedures under this Chapter or any other remedy authorized by law.

9.18.050 Location

A. A Vendor may locate and operate in the public right-of-way subject to the following conditions:

1. A Vendor shall not operate within three hundred (300) feet of any school grounds, park, playground, or City operated recreation center.

2. A Vendor shall not operate within one hundred (100) feet of any street intersection.

3. In addition to the above, a Vendor must comply with the following regulations, depending upon the type of use in which it is located:

a. Residential Use Area:

i. In a Residential Use Area, a Vendor shall move not less than four hundred (400) feet at least every ten (10) minutes and may not return to a previous location or within four hundred (400) feet of a previous location on the same calendar day.

ii. Permitted hours of operation are from 7:00 a.m. to 8:00 p.m.

iii. A Vendor may not be located within four hundred (400) feet of another Vendor.

b. Commercial Use Area:

i. In a Commercial Use Area, a Vendor shall move not less than four hundred (400) feet at least every three (3) hours and may not return to a previous location or within four hundred (400) feet of a previous location on the same calendar day.

ii. Permitted hours of operation are from 6:00 a.m. to 12:00 a.m.

iii. If a Vendor is located in a Commercial Use Area and is within four hundred (400) feet of a residence, Vendor shall comply with the requirements listed above for Residential Use Area.

c. Industrial Use Area:

i. In an Industrial Use Area, a Vendor may operate twenty-three (23) hours a day.

ii. If a Vendor is located in an Industrial Use Area and is also within four hundred feet (400) feet of a residence, it shall comply with the requirements listed above for Residential Use Area.

4. No Vendor shall be located or maintained on public property, including bicycle pathways, inconsistent with any provision of this Code.

B. A Vendor may locate on private property subject to the following conditions:

1. Incidental to a primary use with the primary use having a valid City of Lodi Business Tax Certification;

2. A Vendor shall not be the primary use of a parcel unless that parcel is developed in accordance with the standards of the City's Development Code for that use and the zoning designation for that parcel.

3. A Vendor shall not be permitted as an accessory use to a stand-alone parking lot.

4. A Vendor cannot utilize, or be located on, parking spaces required for the primary use at that property.

5. A Vendor cannot be located on a vacant, undeveloped parcel or lot.

6. A Vendor must be located on a paved concrete or asphalt parking surface.

7. A Vendor cannot interfere with access, aisles, circulation, driveways, or fire lanes and hydrants.

8. A Vendor cannot interfere with pedestrian movement or create a pedestrian hazard.

9. Vending on private property within two-hundred feet of a residential zone is permitted only through the provisions of a Conditional Permit to Operate. Conditions will not be imposed in a manner that unreasonably prevents Mobile Food Vendors from operating solely because they are within two-hundred feet of a residential zone.

9.18.060 Exemption

A. Any person engaged in Vending conducted in connection with the operations of a state-certified open-air market or an authorized street fair or event under a special event permit, lease, real property license, agreement, or other entitlements issued by the City of Lodi.

B. Any person delivering any goods by vehicle where such goods have been ordered in advance for such delivery from any business located at a permanent location and which goods are being delivered from such location to the customer by vehicle, regardless of the point of sale.

C. Section 9.18.050 shall not apply to the sale or distribution of any newspaper, flier, or handbill.

9.18.070 Application of Other Laws and Regulations

A. The provisions of this Chapter prohibiting the stopping or parking of a vehicle shall apply at all times or at those times specified by this Chapter, except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

B. The provisions of this Chapter imposing a time limit on stopping or parking shall not relieve any person from the duty to observe other more restrictive provisions of the California Vehicle Code, this Code or any other ordinances of the City, prohibiting or limiting the stopping or parking of vehicles in specified places or at specified times.

9.18.080 Condition/Appearance of Site

A. The site shall be maintained in a safe and clean manner at all times.

B. No tables, chairs, fences, shade structures, or other site furniture, (permanent or otherwise) or any freestanding signs shall be permitted in conjunction with the Vendor, except as permitted under the Conditional Permit to Operate provisions of Section 9.18.040(E).

C. Should any other site improvements be needed for on-going Vending operations, the Vendor shall be required to apply for appropriate permits to ensure building and public safety and consistency with applicable building and zoning regulations.

D. Exterior storage or display of refuse, equipment, materials, goods, wares, or merchandise associated with the Vendor is prohibited.

9.18.090 Condition/Appearance of Motorized Food Wagon and Conveyance

A. The Vendor shall display, in plain view and at all times, current permits and licenses in or on their vehicle.

B. Any Motorized Food Wagon or Conveyance used in the course of Vending shall be entirely self-sufficient in regards to gas, water, and telecommunications.

Should any utility hook-ups or connections to on-site utilities be required, the Vendor shall be required to apply for appropriate permits to ensure building and public safety and consistency with applicable building and zoning regulations.

C. The Vendor shall not discharge items from any Motorized Food Wagon or Conveyance vehicle onto the sidewalk, gutter, storm inlets, or streets.

9.18.100 Lighting

The Vendor shall install adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from public streets and adjacent properties.

9.18.110 Sanitation

A. All Motorized Food Wagons or Conveyances shall operate out of a Commissary pursuant to California Health and Safety Code Section 114287.

B. All Motorized Food Wagons or Conveyances shall be equipped with refuse containers large enough to contain all refuse generated by the operation of such a vehicle, and the Vendor of the Motorized Food Wagon or Conveyance shall pick up all refuse generated by such operation within a twenty-five (25) foot radius of the vehicle before such vehicle is moved. No Vendor shall dispose of any trash or refuse in any such public or private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of such Vendor.

C. A Motorized Food Wagon or Conveyance shall comply with California Health and Safety Code Section 114299.5 regarding the availability of adequate toilet facilities for use by food service personnel.

9.18.120 Safety and Security

A. No Vending shall be permitted except after the Motorized Food Wagon or Conveyance has been brought to a complete stop and parked in a lawful manner.

B. The Vendor shall install signage in a visible location indicating that loitering is not permitted and customers may only remain on the lot for up to fifteen (15) minutes after receiving their food.

C. The Vendor shall enforce the no loitering provisions of this Code.

9.18.130 Applicability of Regulations to Existing Business

The provisions of this Chapter shall be applicable to all persons and businesses described herein whether the herein described activities were established before or after the effective date of the ordinance enacting this Chapter into law.

9.18.140 Penalties

Any person violating any provisions or failing to comply with any of the mandatory requirements of this Chapter is subject to the following penalties:

A. Fines

1. Violations are subject to the Administrative Enforcement Provisions of this code and the fines established in LMC Section 1.10.260;

2. Three or more violations of this Chapter during any one-year period shall be deemed misdemeanors, punishable as specified in Section 1.08.010(B) of this Code.

B. Suspension/Revocation of Permit to Operate/Conditional Permit to Operate

1. Procedure

In the event of a violation of the regulations of this Chapter, the City Manager or his/her designee shall issue a Notice of Intent to Suspend or Revoke the Permit to Operate. The Vendor shall have the right to request a hearing, as provided in LMC Chapter 1.10, within ten (10) days of

service of the Notice of Intent. If no hearing is requested, the Permit to Operate shall be revoked or suspended upon the expiration of the appeal period set forth in LMC Chapter 1.10.

2. Basis for Suspension/Revocation of Permit to Operate

   a. Any Permit to Operate may be suspended and/or revoked by the City Manager or his/her designee after a review, where it is determined that:

      i. The Vendor has violated the provisions of this Chapter; or

      ii. The Vendor has committed any act or engaged in action, which would constitute grounds for denial of a Permit to Operate pursuant to Section 9.18.040(D) of this Chapter; or

      iii. The Vendor has engaged in fraud, misrepresentation, or false statements in conducting the vending operation or activity; or

      iv. The Vendor has failed to correct a violation under this Chapter within the time period ordered by the City; or

      v. The Vendor has operated or continued to operate without a Permit to Operate or after a Permit to Operate has been suspended or revoked.

3. Basis for Suspension/Revocation of a Conditional Permit to Operate

   a. Any Conditional Permit to Operate may be suspended or revoked for:

      i. Any of the basis to suspend or revoke a Permit to Operate set forth herein; or

      ii. Any violation of the terms of the Conditional Permit to Operate.

9.18.150 Enforcement

The provisions of this Chapter may be enforced by any peace officer, or the Director of Community Development or his/her designee.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect thirty (30) days from and after its passage and approval.

Approved this 1st day of August, 2007

BOB JOHNSON
Mayor

Attest:

RANDI JOHL
City Clerk

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State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1800 was introduced at a regular meeting of the City Council of the City of Lodi held July 18, 2007, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held August 1, 2007, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Katzakian, Mounce, and Mayor Johnson

NOES; COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1800 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL, City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

By

JANICE D. MAGDICH
Deputy City Attorney