

ORDINANCE NO. 2019-__

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE,
CALIFORNIA, AMENDING TITLE 5 AND TITLE 17 OF THE LAKE ELSINORE
MUNICIPAL CODE REGARDING BUSINESS LICENSES AND REGULATING
SIDEWALK VENDORS**

Whereas, currently, the Lake Elsinore Municipal Code ("LEMC") does not provide a process for persons to appeal decisions by City officials or agents affecting business licenses; and

Whereas, the City of Lake Elsinore ("City") desires to create and implement an effective and streamlined process for persons to appeal decisions by City officials and agents with respect to the issuance, denial, suspension, revocation, or failure to renew a business license; and

Whereas, the City intends to create and implement the aforementioned processes through this Ordinance; and

Whereas, the process contemplated by this Ordinance will provide appellants due process, including adequate notice and an opportunity to be heard, as well as a process by which the City can review and take appropriate action concerning business licenses where certain violations of law exist; and

Whereas, the contemplated process will also help ensure that only qualified individuals hold business licenses from the City, in order to protect the health and safety of City residents and ensure compliance with all federal, State, and City laws and regulations by business license holders and applicants; and

Whereas, the City also desires to update the LEMC to comply with certain State law changes; and

Whereas, on September 17, 2018, Governor Brown approved Senate Bill 946, effective January 1, 2019, which establishes a regulatory framework for non-motorized sidewalk vendors, and which recognizes the authority of local jurisdictions to impose certain restrictions on sidewalk vendors in accordance with State law; and

Whereas, the City desires to add Chapter 5.31 of the LEMC and amend various other sections of the LEMC to regulate sidewalk vendors in accordance with State law in order to promote the health, safety, and general welfare of the residents and businesses within the City; and

Whereas, on May 14, 2019 at a duly noticed public hearing, the City Council has considered the recommendation of the Community Development Department, as well as evidence presented by the Community Development Department and other interested parties with respect to this item.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1: The City Council has reviewed and analyzed the proposed amendments to the Lake Elsinore Municipal Code and finds and determines that the ordinance is in compliance with the goals and policies of the City of Lake Elsinore General Plan, that the ordinance will not be detrimental to the public interest, health, safety, convenience, or general welfare of the city; and that it is internally consistent with other applicable provisions of the Lake Elsinore Municipal Code.

Section 2: The City Council hereby finds and determines that the proposed amendments to the Lake Elsinore Municipal Code are exempt from the California Environmental Quality Act (Cal. Publ. Res. Code §§21000 et seq. “CEQA”) and the State CEQA Guidelines (14. Cal. Code Regs §§15000 et seq.), specifically pursuant to Sections 15060(c)(2), 15060(c)(3), and 15061(b)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility that it may have a significant effect on the environment, and because it is not a “project” as that term is defined in Section 15378 of the State CEQA Guidelines.

Section 3: Chapter 5.08 of the Lake Elsinore Municipal Code is hereby amended to add Section 5.08.290 to read as follows:

5.08.290 Denial, Suspension, Revocation.

The City may deny, suspend, revoke, or fail to renew any business license upon a finding by the City, an administrative hearing officer, court of law or other governmental body of any of the below:

1. Any violation of this Code, any other code adopted by this Code, or any State law that occurred on the premises of the business to which the application or license pertains;
2. Any violation of this Code, any other code adopted by this Code, or any State law that occurred for which the applicant or an officer of the applicant, if an entity, was responsible; or,
3. That information that was provided in the process of obtaining a business license was materially false. If a business license is suspended or revoked, no former business license holder shall conduct any business in the City until the City issues a new business license or the suspension is lifted.
4. The City may withhold, deny or refuse to renew any permit(s), license(s) and/or approval(s) if:
 - a. A current violation of this Code or adopted codes exists on a property relating to the permit(s), license(s), or approval(s), and such permit, license or approval is not required to remedy the violation; or,
 - b. The applicant, holder of the permit, license or approval, or the property owner is subject to any outstanding fines or fees owed to the City.”

Section 4: Chapter 5.08 of the Lake Elsinore Municipal Code is hereby amended to add Section 5.08.300 to read as follows:

5.08.300 Appeal.

- A. Any holder of a business license who is aggrieved by any decision of the City with respect to the issuance, denial, suspension, revocation, or failure to renew a business license under the provisions of this Code, may appeal the decision by filing a written notice of appeal with the City Clerk within fifteen (15) calendar days after such decision is made.
- B. The written notice of appeal shall be filed with the City Clerk, along with payment of an appeal processing fee in an amount to be established by resolution of the City Council. The appeal processing fee, however, shall be excused upon a satisfactory showing of undue financial

hardship following an application submitted to the City Clerk on forms approved by the City Clerk.

- C. The written notice of appeal shall contain the following information: (1) the name of the appellant; (2) the address of the appellant, (3) a brief statement of the nature of the appeal together with any material facts claimed to support the contentions of the appellant; and (4) the signature of the appellant.
- D. Upon receipt of a timely and proper appeal, the City Clerk shall forward the appeal to the City's Nuisance Abatement Board ("NAB"), which shall schedule a hearing for the appeal in front of the NAB.
- E. The City Clerk shall provide notice not later than ten (10) calendar days before the scheduled hearing by first class mail to the appellant at the address listed on the request for a hearing.
- F. The NAB shall issue a written decision after the hearing. The decision of the NAB shall be final.
- G. The failure to timely and properly file a request for a hearing with the City Clerk, or the failure to appear at a scheduled and properly noticed hearing, shall constitute a waiver of the right to appeal and a failure to exhaust administrative remedies, and an admission that the City's action was proper. If appeal is waived for any reason, including as provided under this subsection, the decision of the City official or agent being appealed shall be final, and shall not be further appealable.
- H. Any final decision of the NAB shall be subject to judicial review exclusively by writ proceedings pursuant to Code of Civil Procedure section 1094.5.

Section 5: Title 5 of the Lake Elsinore Municipal Code is hereby amended to add Chapter 5.31 regarding sidewalk vendors to read as follows:

Chapter 5.31 SIDEWALK VENDORS

Sections:

5.31.010	Purpose.
5.31.020	Definitions.
5.31.030	Business license requirement.
5.31.040	Sidewalk vendor licenses.
5.31.050	Sidewalk vendor standards.
5.31.060	Enforcement.

5.31.010 Purpose.

The purpose and intent of this Chapter is to regulate Sidewalk Vendors in accordance with State law in order to promote the health, safety, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to Government Code sections 51036 through 51039.

5.31.020 Definitions.

For purposes of this Chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

“Roaming sidewalk vendor” means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

“Sidewalk vendor” means a person or entity 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.

“Sidewalk vendor license” means a City business license to engage in sidewalk vending activity in accordance with the terms and conditions of this Chapter, this Code, and the conditions of approval for the business license.

“Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

5.31.030 License requirement.

All Sidewalk Vendors shall obtain and maintain a Sidewalk Vendor License from the City in accordance with the criteria and process set forth in this Chapter and this Code. Sidewalk Vendor Licenses issued pursuant to this Chapter shall be valid from the date of issuance for a period of one year, or shorter period as specified at the time of application, unless the Sidewalk Vendor License has been terminated, suspended, or revoked for any of the causes set forth in this Chapter.

5.31.040 Sidewalk vendor license.

All applicants wishing to obtain a Sidewalk Vendor License from the City shall file an application with the City upon a form provided by the City and shall pay a Sidewalk Vendor License fee as established by the City. An application for a Sidewalk Vendor License shall include at least the following information:

- A. The name of the applicant.
- B. The current mailing address of the applicant.
- C. If the applicant is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.
- D. Brief description of the nature of the business and the goods to be sold or exchanged.
- E. The California seller’s permit number (California Department of Tax and Fee Administration sales tax number), if any, of the applicant.
- F. Photograph of the applicant and photograph of any pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used in such sidewalk vending activity taken within 60 days immediately prior to the date of filing the application; photograph

of applicant shall be two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner.

- G. A copy of a current and valid permit from the Riverside County Department of Environmental Health. This requirement shall only apply to applicants for a Sidewalk Vendor License to sell food products that have not been commercially packaged.
- H. A certification by the applicant that to his or her knowledge and belief, the information contained on the application is true.

5.31.050 Sidewalk vendor standards.

All Sidewalk Vendors operating within the City shall comply with the following provisions:

- A. Sidewalk Vendors shall comply with all applicable City, State, and federal laws and regulations.
- B. Sidewalk Vendors shall maintain a current and valid permit from the Riverside County Department of Environmental Health. This requirement shall only apply to Sidewalk Vendors selling food products that have not been commercially packaged.
- C. Sidewalk Vendors shall maintain sanitary conditions.
- D. There is no set restriction on the hours of operation of Sidewalk Vendors; however, reasonable restricted hours of operation may be established as a condition of approval of the Sidewalk Vendor License. In nonresidential areas, any limitations on the hours of operation of Sidewalk Vendors shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.
- E. No Stationary Sidewalk Vendors shall operate in a park owned or operated by the City where the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire. Such restriction, if imposed, shall be set forth as a condition of approval of the Sidewalk Vendor License and identify the restricted park(s).
- F. No Sidewalk Vendors shall operate in a park owned or operated by the City in a manner that impedes the public's use and enjoyment of natural resources and recreational opportunities, or that causes an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park. Such restriction, if imposed, shall be set forth as a condition of approval of the Sidewalk Vendor License and identify the restricted park(s).
- G. No Stationary Sidewalk Vendors shall operate in any areas that are zoned exclusively residential.
- H. No Sidewalk Vendors shall operate in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the operating hours of that certified farmers' market or swap meet.

- I. No Sidewalk Vendors shall operate within the immediate vicinity of an area designated for a temporary special permit issued by the City. This prohibition shall only be effective for the duration of the temporary special permit.
- J. No Sidewalk Vendors shall operate in road medians or in areas that separate opposing lanes of traffic on divided roadways.

5.31.060 Enforcement.

Any sidewalk vending activity within the City in violation of this Chapter is hereby declared to be unlawful and a public nuisance. Any person who engages in a violation of this Chapter shall be subject to the following penalties and remedies:

- A. Any person in violation of any provision of this Chapter shall be punishable by an administrative fine of up to \$100 for a first violation.
- B. Any person in violation of any provision of this Chapter shall be punishable by an administrative fine of up to \$200 for a second violation within one year of the first violation, and an administrative fine of up to \$500 for each additional violation within one year of the first violation.
- C. The City may rescind a Sidewalk Vendor License issued to a Sidewalk Vendor for the term of that Sidewalk Vendor License upon the fourth violation or subsequent violations of any provision of this Chapter.
- D. A violation of any provision of this Chapter or failure to pay an administrative fine pursuant to this Section shall not be punishable as an infraction or misdemeanor.
- E. Any person alleged to have violated any provision of this Chapter shall not be subject to arrest except when otherwise permitted by law.
- F. When assessing an administrative fine pursuant to this Section, the City Manager or the City Manager's designee shall take into consideration the Sidewalk Vendor's ability to pay the fine. The City shall provide the Sidewalk Vendor 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 Sidewalk Vendor may request an ability-to-pay determination at adjudication or while the fine remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program. If the Sidewalk Vendor meets the criteria described in Government Code section 68632, subdivision (a) or (b), the City shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this Section.
- G. The City reserves the right to allow any Sidewalk Vendor in violation of any provision of this Chapter to complete community service in lieu of paying the total administrative fine, waive the administrative fine, or offer an alternative disposition.

Section 6. Section 5.32.010 of the LEMC is hereby amended to read as follows (new text underlined and deletions in ~~striketrough~~):

“Business by vehicle” means the running, driving or operating of any motorized vehicle, automobile, truck, or automobile tank, ~~wagon or any vehicle~~ for the purpose of transportation, sale, collection or delivery of goods, wares, merchandise or other personal property of any kind from a motorized vehicle, either as a principal business or in connection with any other business or in soliciting for work, labor or services to be performed upon the public streets in or from a vehicle, or to be performed on goods, wares, merchandise, clothes or other personal property to be taken for such purpose to a plant or establishment inside or outside the City. This definition shall not be deemed to apply to the delivery of goods by persons operating such a vehicle in conjunction with a fixed place of business within the City for which such business a license fee has been paid pursuant to the provisions of this chapter. This definition shall not be deemed to apply to the delivery of goods by persons operating a non-motorized vehicle or conveyance. This definition shall not be construed as imposing a tax upon vehicles, but as a method of classification of businesses and distinguishing between persons maintaining a fixed place of business in the conduct of which a vehicle is used, and persons maintaining a business in the conduct of which vehicles are used, but who do not have a fixed place of business in the City.

“Commercial traveler” means and includes any person who travels or goes from place to place within the City and solicits, sells or takes orders at retail for goods, wares or merchandise for present or future delivery.

“Mobile vending” means business by vehicle.

“Peddler” means and includes any person who travels or goes from house to house in a motorized conveyance within the City and peddles, hawks, vends or sells any goods, wares, medicines, merchandise or anything of value in the possession of the peddler to persons other than manufacturers, wholesalers, jobbers or retailers in such commodities.

“Public parkway” means any portion of a public street right-of-way which is set apart by curbs or land designated by the City, for pedestrian travel.

“Public street” means that portion of a street designated as such by the City, which is improved or unimproved, designed and ordinarily used by the public for the primary purpose of vehicular traffic.

“Solicitor” means and includes any person who goes from house to house within the City and solicits or takes orders at retail for any services, goods, wares or merchandise for future performance or delivery.

Section 7: Chapter 5.32 of the Lake Elsinore Municipal Code is hereby amended to add Section 5.32.015 to read as follows:

5.32.015 Sidewalk vendors.

The provisions of this Chapter shall not apply to sidewalk vendors as that term is defined in Chapter 5.31 of this Code.

Section 8: Chapter 5.33 of the Lake Elsinore Municipal Code is hereby amended to add Section 5.32.015 to read as follows:

5.33.025 Sidewalk vendors.

The provisions of this Chapter shall not apply to sidewalk vendors as that term is defined in Chapter 5.31 of this Code.

Section 9: The definition of “Street vendor” in Section 17.08.190 of the LEMC is hereby amended to read as follows (new text underlined and deletions in ~~strikethrough~~):

~~“Street vendor” means a portable, nonpermanent, wheeled, movable facility for the sale of retail merchandise or food and beverages from a wagon or pushcart by a vendor with a valid City business license.~~ “Sidewalk vendor” means a person or entity 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.

Section 10: The Table of Mixed Use Land Uses in Section 17.86.020 of the LEMC is hereby amended to read as follows (new text underlined and deletions in ~~strikethrough~~):

P = Permitted use.

C = Use subject to a conditional use permit.

T = Temporary use permitted with a temporary use permit.

■ = Prohibited use in the zone.

~~For properties within the Downtown Master Plan, Section 1.4, Detailed Land Use Matrix of the Downtown Code, supersedes this chapter. In the Downtown Master Plan, land uses are specific to the garden district, historic district, cultural district and waterfront district as defined by the Downtown Master Plan.~~

Use	RMU	CMU	Additional Regulations
Animal hospital	C	C	
Assembly use	C	C	
Automotive repair or service	■	■	
Bar, pub, cocktail lounge	C	C	
Bed and breakfast	P	P	
Botanical garden	P	P	
Cardroom	■	C	
Caretaker quarters	P	P	
Car wash	■	C	
Catering service	C	C	
Check cashing service	■	P	
Cigar lounge/hookah bar	C	C	

Use	RMU	CMU	Additional Regulations
Community center	P	P	
Day care facility	C	C	
Drive-through for bank, food, pharmacy	■	C	
Financial institution	P	P	
Food establishment	P	P	LEMC 17.86.035
Fortunetelling	C	C	
Government building	P	P	
Gun and ammunition sales	■	C	
Health, fitness or exercise club	C	P	
Home occupation	P	P	
Hotel	■	C	
Housing, permanent:			
Apartment unit	P	P	
Boardinghouse	P	P	
Condominium	C	C	
Duplex, triplex, fourplex	P	P	
Row house/townhouse	P	P	
Kiosk for retail sales	■	P	LEMC 17.134.037
Library	P	P	
Live/work unit	P	P	
Massage establishment	C	C	
Medical marijuana dispensary	■	■	Chapter 17.156 LEMC
Medical office	P	P	
Mortuary	■	C	
Museum	C	P	
Nightclub	■	■	
Open air market	T	T	
Personal service	P	P	
Professional office	P	P	
Park/playground	P	P	

Use	RMU	CMU	Additional Regulations
Parking facility	P	P	
Pawn shop	■	P/C	CUP for gun sales
Pet shop	■	P	
Recreation facility	C	C	
Residential care facility	C	C	
Retail sale	P	P	
Street vendor/pushcart sales	■	■	
<u>Sidewalk vendors</u>	<u>P</u>	<u>P</u>	<u>Chapter 5.31 LEMC</u>
Studio/workshop	P	P	
Supportive housing	P	P	
Swap meet, indoor	■	C	
Swap meet, outdoor	■	■	
Tattoo	■	C	
Theater	■	C	
Thrift store	P	P	
Transitional housing	P	P	
Other uses that the Director of Community Development finds to be in accord with the purpose of this chapter and having characteristics similar to those uses listed in this table	P, C, T or ■	P, C, T or ■	

Section 11: The definition of “Street vendor” in Section 17.86.020 of the LEMC is hereby amended to read as follows (new text underlined and deletions in strikethrough):

~~“Street vendor” means a portable, nonpermanent, wheeled, movable facility for the sale of retail merchandise or food and beverages from a wagon or pushcart by a vendor with a valid City business license.~~ “Sidewalk vendor” 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.

Section 12: The Table of Mixed Use Land Uses in Section 17.134.020 of the LEMC is hereby amended to read as follows (new text underlined and deletions in ~~strikethrough~~):

P = Permitted use.

C = Use subject to a conditional use permit.

T = Temporary use permitted with a temporary use permit.

■ = Prohibited use in the zone.

For properties within the Downtown Master Plan, Section 1.4, Detailed Land Use Matrix of the Downtown Code, supersedes this chapter. In the Downtown Master Plan, land uses are specific to the garden district, historic district, cultural district and waterfront district as defined by the Downtown Master Plan.

Use	RMU	CMU	Additional Regulations
Animal hospital	C	C	
Assembly use	C	C	
Automotive repair or service	■	■	
Bar, pub, cocktail lounge	C	C	
Bed and breakfast	P	P	
Botanical garden	P	P	
Cardroom	■	C	
Caretaker quarters	P	P	
Car wash	■	C	
Catering service	C	C	
Check cashing service	■	P	
Cigar lounge/hookah bar	C	C	
Community center	P	P	
Day care facility	C	C	
Drive-through for bank, food, pharmacy	■	C	
Financial institution	P	P	
Food establishment	P	P	LEMC 17.86.035
Fortunetelling	C	C	
Government building	P	P	
Gun and ammunition sales	■	C	
Health, fitness or exercise club	C	P	
Home occupation	P	P	
Hotel	■	C	
Housing, permanent:			
Apartment unit	P	P	
Boardinghouse	P	P	
Condominium	C	C	
Duplex, triplex, fourplex	P	P	

Use	RMU	CMU	Additional Regulations
Row house/townhouse	P	P	
Kiosk for retail sales	■	P	LEMC 17.134.037
Library	P	P	
Live/work unit	P	P	
Massage establishment	C	C	
Medical marijuana dispensary	■	■	Chapter 17.156 LEMC
Medical office	P	P	
Mortuary	■	C	
Museum	C	P	
Nightclub	■	■	
Open air market	T	T	
Personal service	P	P	
Professional office	P	P	
Park/playground	P	P	
Parking facility	P	P	
Pawn shop	■	P/C	CUP for gun sales
Pet shop	■	P	
Recreation facility	C	C	
Residential care facility	C	C	
Retail sale	P	P	
Street vendor/pushcart sales	■	■	
<u>Sidewalk vendors</u>	<u>P</u>	<u>P</u>	<u>Chapter 5.31</u> <u>LEMC</u>
Studio/workshop	P	P	
Supportive housing	P	P	
Swap meet, indoor	■	C	
Swap meet, outdoor	■	■	
Tattoo	■	C	
Theater	■	C	
Thrift store	P	P	
Transitional housing	P	P	

Use	RMU	CMU	Additional Regulations
Other uses that the Director of Community Development finds to be in accord with the purpose of this chapter and having characteristics similar to those uses listed in this table	P, C, T or ■	P, C, T or ■	

Section 13: The definition of “Street vendor” in Section 17.134.020 of the LEMC is hereby amended to read as follows (new text underlined and deletions in strikethrough):

~~“Street vendor” means a portable, nonpermanent, wheeled, movable facility for the sale of retail merchandise or food and beverages from a wagon or pushcart by a vendor with a valid City business license.~~ “Sidewalk vendor” 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.

Section 14: Severability. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

Section 15: Effective Date. This Ordinance shall become effective at 12:01 a.m. on the thirty-first (31st) day after the date of adoption.

Section 16: Certification. The City Clerk shall certify to the passage of this Ordinance and shall cause a synopsis of the same to be published according to law.

Passed and Adopted on this ____ day of _____, 2019.

Steve Manos
Mayor

Attest:

Mark Mahan
Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF LAKE ELSINORE)

I, Mark Mahan, Deputy City Clerk of the City of Lake Elsinore, do hereby certify that the foregoing Ordinance No. 2019-____ was introduced at the Regular meeting of _____, 2019, and adopted by the City Council of the City of Lake Elsinore at its Regular meeting of _____, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Lake Elsinore, California on the ____ day of _____, 2019, and on the ____ day of _____, 2019.

Mark Mahan
Deputy City Clerk