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17 UNITED STATES DISTRICT COURT

18 CENTRAL DISTRICT OF CALIFORNIA EASTERN DIVISION

19
20 INLAND COALITION FOR IMMIGRANT
JUSTICE,

21 Plaintiff,

22 v.

23 CITY OF FONTANA, CITY COUNCIL OF
24 FONTANA, MAYOR ACQUANETTA
WARREN, PHILLIP BURUM, FONTANA
25 CODE COMPLIANCE DEPARTMENT,
4LEAF, INC., CRAIG TOLE, PETE ROQUE,

26 Defendants.

Case No. 5:25-CV-2092

**FIRST AMENDED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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PRELIMINARY STATEMENT

1
2 1. Through this lawsuit, Plaintiff Inland Coalition for Immigrant Justice
3 (“ICIJ” or “Coalition”) challenges the unlawful campaign of the City of Fontana
4 (“City” or “Fontana”) to deny and override the rights of sidewalk vendors which
5 are secured by the U.S. Constitution and by the laws of the State of California. In
6 doing so, Plaintiff carries out its mission to restore the rights of sidewalk vendors
7 and enable them to carry out their businesses in the City of Fontana.

8 2. Sidewalk vendors, selling clothing, foods and other goods, are a
9 familiar sight in California’s cities. In addition to the valuable contribution
10 sidewalk vending makes to State and local economies, it provides a means of
11 upward mobility for low-income, BIPOC (i.e., Black, indigenous and people of
12 color), and immigrant communities who often face discrimination, low wages,
13 labor violations, and limited pathways for economic advancement.

14 3. In 2018, recognizing the significance of sidewalk vending to
15 “promot[ing] entrepreneurship and support[ing] immigrant and low-income
16 communities,” the California Legislature passed Senate Bill No. 946 (“SB-946”),
17 adopting state-wide standards safeguarding vendors against discriminatory local
18 regulation and requiring local governments to treat vendors as a legitimate part of
19 the State’s economy. Cal. Gov’t Code §§ 51036 *et seq.*; SB-946, §1(b); *see*
20 Legislative Counsel’s Digest of Senate Bill No. 946, at 2. In 2022, Senate Bill No.
21 972 (“SB-972”) followed, ending the treatment of sidewalk vendors selling food as
22 a misdemeanor offense and creating a new category for vendors – “compact mobile
23 food operation[s]” – in the State’s Retail Food Code. Cal. Health & Safety Code
24 §§ 113818, 113831, 113868 & ch. 11.7. Across the State, many localities have
25 embraced these enactments.

26 4. The City of Fontana, however, along with certain other local
27 governments, has chosen a very different path, subjecting sidewalk vendors to
28 unlawful regulations and illegal seizures of their property, and hiring contracted

1 private agents to enforce these rules. This conduct contravenes sidewalk vendors’
2 rights under the First, Fourth, Fifth, and Fourteenth Amendments, is preempted by
3 the State of California’s statutory enactments, and greatly undercuts Plaintiff’s
4 mission.

5 5. The City’s first step was to enact Ordinance 1789 in 2019. Among its
6 terms is a provision purportedly authorizing the seizure of sidewalk vendor
7 property “as evidence” of a violation of the City’s vending Article. Fontana, Cal.
8 Ordinance 1789 (2019) (“Or. 1789”), (amending Chapter 15, Article XVII of the
9 Fontana Municipal Code (“FMC”) (Art. XVII §§ 15-818 - 15-828)). It also singles
10 out sidewalk vendors, mandating onerous permitting requirements that go far
11 beyond what the City requires of other small businesses. Or. 1789, § 15-820.
12 These requirements are unrelated to any “objective health, safety, or welfare
13 concerns” and therefore violate the State’s requirements. Cal. Gov’t Code §
14 51038(c). These include that vendors must (a) obtain a multimillion dollar
15 insurance policy naming the City, (b) pay for annual LiveScan background checks
16 ostensibly to reduce vendors’ “risks to children,” and (c) agree to use public
17 sidewalks at their own risk despite the City not taking any steps to ensure the
18 sidewalks are “safe or conducive to sidewalk vending.” Or. 1789, § 15-820-15-
19 821 & 11th Whereas cl.

20 6. Although the City initially moved slowly to utilize these provisions,
21 by early 2022, City officers had begun enforcing them against local vendors. This
22 step not only resulted in hundreds of seizures of vendors’ perishable goods – which
23 officers discarded, rather than use *as evidence* – it also deterred vendors from even
24 attempting to apply for permits. Or. 1789, §§ 15-820, 15-828. But the City
25 remained unsatisfied and, in the fall of 2023, the City Council and Mayor
26 Acquanetta Warren adopted a new and more aggressive strategy to combat
27 sidewalk vending. Having failed to drive sidewalk vendors out of the City, Mayor
28 Warren announced on October 10, 2023 that it was “time to grab a couple of

1 hammers,” and the City Council passed Ordinance 1925 two weeks later. Fontana,
2 Cal. Ordinance 1925 (2023) (“Or. 1925”) (adding FMC sections 1-14 and 15-829);
3 *see* Fontana City Council Meeting (Oct. 10, 2023), at 1:20:08 – 1:20:23,¹
4 <https://fontana.granicus.com/player/clip/897> (hereafter, “10/10/2023 City Council
5 Meeting”).

6 7. This further Ordinance escalated the City’s attack on sidewalk
7 vendors by making it a criminal misdemeanor for a vendor to “interfere in any
8 way” with City officers, punishable by fines up to “\$1,000 or . . . imprisonment”
9 for up to six months. Or. 1925, § 1-14 (the “Enforcement Obstruction
10 Consequences” provision or “EOC”). It also added a new impoundment section
11 purporting to authorize City officers to seize vendors’ goods and equipment under
12 multiple additional grounds. Or. 1925, § 15-829. Chillingly, moreover, the City
13 has paid \$645,000 or more to retain an outside contractor, 4Leaf Inc. (“4Leaf”), to
14 enforce its new and existing regulations, and agreed to allow 4Leaf personnel to
15 “operate independently” in carrying out its enforcement activities. *Infra*, pp. 24-
16 25.

17 8. Unconstrained by significant City oversight, 4Leaf agents have since
18 conducted a lawless campaign to harass, intimidate, and ultimately coerce vendors
19 to abandon their rights and leave the City. Repeatedly, 4Leaf agents confiscate
20 vendors’ property without giving vendors any notice or an opportunity to be heard.
21 Through its unlawful enactments and its agents’ implementation thereof, the City
22

23
24 ¹ Throughout this Complaint, references are made to Fontana’s City Council
25 meetings, as reflected above. These meetings are preserved on the City’s website
26 for the public in the form of video recordings, and the links that are kept by the
27 City necessarily record the entire meeting. In order to find the portion of the
28 meeting being cited, we identify the beginning and end of the portion measured by
the length of time from the meeting’s beginning, such as
“[hour]:[minutes]:[seconds] – [hour]:[minutes]:[seconds]” or, as above, “1:20:08 –
1:20:23”.

1 has succeeded in expelling – or at least greatly restricting, through intimidation – a
2 majority of its vending population.

3 9. To end these irreparable harms, Plaintiff seeks a determination by the
4 Court (a) declaring that the challenged provisions of Ordinances 1789 and 1925 are
5 unconstitutional, unlawful, and preempted by the express terms of SB-946 and SB-
6 972, and (b) enjoining the City and its personnel and 4Leaf and its operatives from
7 implementing or enforcing the challenged provisions.

8 **JURISDICTION AND VENUE**

9 10. This is an action for injunctive relief, declaratory relief and other
10 lawful relief pursuant to 42 U.S.C. § 1983, based upon Defendants’ ongoing
11 violations of the United States Constitution and laws of the State of California that
12 deny and override the rights of Plaintiff, its members, and other sidewalk vendors
13 that now or before have operated in the City of Fontana. Jurisdiction exists under
14 28 U.S.C. §§ 1331 and 1343 as this case is brought pursuant to 42 U.S.C. § 1983
15 and raises questions of federal constitutional law under the First, Fourth, Fifth, and
16 Fourteenth Amendments. There is also supplemental jurisdiction in this Court over
17 Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367.

18 11. Venue is proper in the Central District because the events and conduct
19 complained of in this action occurred in the Central District, Eastern Division.

20 **PARTIES**

21 12. Plaintiff Inland Coalition for Immigrant Justice is a nonprofit
22 organization dedicated to supporting vulnerable communities throughout the Inland
23 Empire. Founded in 2008, Plaintiff’s mission is to advocate to improve the lives of
24 those residing in San Bernardino and Riverside counties. Its work focuses on
25 improving the quality of life for these communities by increasing their access to
26 needed resources, education, and policy decision-making. Today, some 35
27 grassroots, community, faith-based, legal service, and workers’ rights organizations
28

1 are part of the Coalition. Importantly, sidewalk vending is a core focus of
2 Plaintiff's programs because sidewalk vending represents one of the primary
3 means for these vulnerable individuals to earn a living and provide for their
4 families.

5 13. Plaintiff has two types of members: organizational members and
6 individual community members. Organizational members sign a coalition
7 agreement with Plaintiff and pay dues based upon their own operating budgets.
8 Community members join Plaintiff by completing an online application and paying
9 initial dues of \$25, and are asked to continue such payments yearly if they are able
10 to. Plaintiff currently has some 520 community members, more than half of whom
11 are sidewalk vendors, and the great majority of whom are low-income,
12 monolingual Spanish speakers. Moreover, a significant number of Plaintiff's
13 sidewalk vendor members have been seriously harmed by the City's Ordinances
14 and unlawful conduct set forth herein.

15 14. Plaintiff, through its multiple programs, workshops, and advocacy, has
16 built strong relationships with the sidewalk vendors operating in Inland Empire
17 cities, including Fontana. These relationships include providing vendors with
18 small business training, peer-to-peer technical assistance, grant opportunities and
19 other valuable individualized assistance. Plaintiff also has long conducted legal
20 clinics, KYR ("Know Your Rights") trainings and educational workshops that are
21 open to sidewalk vendors. In 2018, Plaintiff joined the California Street Vending
22 Campaign and was active in advocating for statewide changes to street vending
23 laws, namely through the passage of California's SB-946. After enactment of SB-
24 946, Plaintiff played a substantial role in assisting the City of San Bernardino in
25 developing its sidewalk vending ordinance, and has assisted numerous other Inland
26 Empire cities, including Palm Springs, Ontario, Redlands, and Coachella in
27 fashioning their own vending ordinances, which seek to remain within the bounds
28

1 of California law. Moreover, Plaintiff has continued to speak out against unfair or
2 discriminatory provisions in vending ordinances adopted by other Inland Empire
3 cities, including Fontana.

4 15. With respect to Fontana, Plaintiff also reached out to the City in 2019
5 as it was preparing its ordinance, and met with City officials, including a City
6 Council member and the chief of police, to discuss the ordinance, but without
7 appreciable impact. By the year 2022, Fontana’s treatment of sidewalk vendors
8 had begun to deteriorate significantly. This included, for example, the City’s
9 increased use of its Or. 1789 provision (§15-828) to seize vendors’ perishable
10 goods and food, which expanded from only a limited number of seizures during
11 2022 to more than four hundred in 2023.² Accordingly, Plaintiff found it
12 necessary to invest additional resources in the City, including educating its vendors
13 of these developments and how to respond thereto. By mid-2023, however, the
14 Mayor and City Council remained unsatisfied by the results of the City’s officers,
15 and in October 2023, the City escalated its attacks on sidewalk vendors by enacting
16 Or. 1925 and its punitive provisions and hiring 4Leaf personnel to enforce them.

17 16. Thereafter, Fontana’s escalating attacks on sidewalk vendors have had
18 severe consequences – a large number of the vendors previously operating there
19 have left the City and not returned to date. Plaintiff has responded to the City’s
20 increased attacks by shifting quite substantial resources to Fontana to ensure that
21 the City’s vendors there learned of the attacks and their consequences. Initially,
22 three or more staff members were assigned daily to reach out to the City’s vendors
23 to help prepare them for Fontana’s heightened targeting of vendors, and to
24 mobilize other City residents to petition the City Council in support of vendors.

26 ² City of Fontana, *Impacts of Unlicensed Street Vending in Fontana*,
27 <https://www.fontanaca.gov/3641/Impacts-of-Unlicensed-Vending> (last accessed on
28 8/6/2025) (reporting seizures of vendor property “on 13 occasions” in 2022 but
“over 400 times” in 2023).

1 Plaintiff also conducted numerous media interviews forcefully raising its concerns
2 over the City’s conduct, which was gaining attention in nearby cities. During this
3 time, at least 40-60 hours a week of staff resources were spent assisting sidewalk
4 vendors in Fontana between October and December 2023 alone. Later, however,
5 as the City’s sidewalk vendor population dwindled, Plaintiff’s efforts have
6 necessarily been reduced. While Plaintiff has continued to support Fontana’s
7 remaining vendors, many fewer of them continue to operate in the City today.
8 These losses represent harms to both Plaintiff and the vendors themselves.

9 17. Plaintiff views its mission to improve and enrich the quality of life of
10 the vulnerable communities it serves very seriously, and places a high priority on
11 its relationships with sidewalk vendors in the Inland Empire. However, due to the
12 City’s unlawful conduct in Fontana, Plaintiff has lost contact with more than a few
13 Fontana sidewalk vendors and seen a corresponding drop in attendance at its
14 workshops, clinics, educational training and the like, with significant impact to its
15 mission. Moreover, Plaintiff now must worry not only for the future of street
16 vendors in Fontana, but also for vendors in other cities across California which
17 look to Fontana as the playbook for eliminating street vendors from their city with
18 impunity.

19 18. Article III standing. “The Article III standing inquiry serves a single
20 purpose: to maintain the limited role of courts by ensuring they protect against only
21 concrete, non-speculative injuries . . . Parties must have a ‘personal stake in the
22 outcome’ sufficient to ensure the court that, absent judicial review, they will suffer
23 or have suffered some direct injury.” *East Bay Sanctuary Covenant v. Biden*, 993
24 F.3d 640, 662 (9th Cir. 2021) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555,
25 583 (1992)). Here, Plaintiff has satisfied the requirements of Article III standing
26 by (1) the doctrine of organizational standing, *FDA v. All. for Hippocratic Med.*,
27 602 U.S. 367, 380-81, 393-97 (2024) and (2) the doctrine of associational
28 standing, *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977).

1 (a) Organizational standing exists when an association “sue[s] on
2 [its] own behalf for injuries [it has] sustained.” *Hippocratic Medicine*, 602 U.S. at
3 394. “To determine whether organizational standing requirements have been
4 satisfied, we ‘conduct the same inquiry as in the case of an individual: Has the
5 plaintiff “alleged such a personal stake in the outcome of the controversy as to
6 warrant his invocation of federal court jurisdiction.”’” *East Bay*, 993 F.3d at 662
7 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982)). In
8 *Havens Realty*, the organizational standing’s seminal case, the plaintiff
9 organization (“HOME”), a housing counseling organization assisting low income
10 clients, learned it had been provided false information about apartment availability
11 (i.e., “racial steering”) by owners of an apartment complex and then sued the latter.
12 *Id.* at 378-79. As that Court held, because the apartment owners’ racial “steering
13 practices [had] perceptibly impaired HOME’s ability to provide counseling and
14 referral services for low-and-moderate-income homeseekers, there can be no
15 question that [HOME] has suffered injury in fact. Such concrete and demonstrable
16 injury to the [HOME’s] activities – with the consequent drain on [that]
17 organization’s resources – constitutes far more than simply a setback to [its]
18 abstract social interests.” *Id.* at 379. Accordingly, the Court concluded, “in view
19 of HOME’s allegations of injury it was improper for the District Court to dismiss
20 for lack of standing the claims of the organization in its own right.” *Id.*; accord
21 *Hippocratic Medicine*, 602 U.S. at 395; see *Nat’l Council of La Raza v. Cegavske*,
22 800 F.3d 1032, 1040 (9th Cir. 2015) (organization standing established when
23 “Plaintiffs expended additional resources that they would not otherwise have
24 expended and in ways that they would not have expended them” and that “[b]ut for
25 defendants’ violations . . . Plaintiffs’ ‘would be able to allocate substantial
26 resources to other activities central to [their] mission[s]”).

27 (b) The doctrine of associational standing “permits an
28 organization to ‘sue to redress its members’ injuries, even without a showing of

1 injury to the association itself.” *Oregon Advoc. Ctr. v. Mink*, 322 F.3d 1101, 1109
2 (9th Cir. 2003). As held in *Hunt*, 432 U.S. at 343, “we have recognized that an
3 association has standing to bring suit on behalf of its members when: (a) its
4 members would otherwise have standing to sue in their own right; (b) the interests
5 it seeks to protect are germane to the organization’s purpose; and (c) neither the
6 claim asserted nor the relief requested requires the participation of individual
7 members in the lawsuit.” *E.g., Vasquez Perdomo v. Noem*, 148 F.4th 656, 676 (9th
8 Cir. 2025) (same); *see California Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094,
9 1099-1100 (9th Cir. 2024) (addressing “associational standing requirements”:
10 “When ‘standing is challenged on the basis of pleadings,’ we must ‘accept as true
11 all material allegations of the complaint’ and ‘construe the complaint in favor of
12 the complaining party.’ [citation omitted] At this stage, ‘general factual allegations
13 of injury resulting from the defendant’s conduct may suffice, for on a motion to
14 dismiss we presume that general allegations embrace those specific facts that are
15 necessary to support the claim’”, quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555,
16 561 (1992) (simplified)).

17 19. Organizational standing. Here, the City’s challenged conduct – its
18 adoption and implementation of the unconstitutional and unlawful provisions of its
19 Ordinances 1789 and 1925 aimed at sidewalk vendors – has “directly affected and
20 interfered with” one of Plaintiff’s core organizational goals – to assist sidewalk
21 vendors to earn a living and provide for their families. *E.g., Hippocratic Medicine*,
22 602 U.S. at 395. To achieve this goal, Plaintiff has long pursued (1) building
23 strong relationships with vendors in the City and elsewhere by providing sidewalk
24 vendors with small business training, peer-to-peer technical assistance, grant
25 opportunities, and other individualized assistance, (2) conducting legal clinics,
26 KYR (“Know Your Rights”) training and similar educational workshops for them,
27 and (3) working with multiple other Inland Empire cities to assist them in
28 fashioning their own vending ordinances in a lawful manner, to name only a few.

1 Plaintiff first found it necessary to invest additional resources in the City of
2 Fontana in 2022-2023, when its code compliance officers began confiscating
3 sidewalk vendors’ perishable goods and discarding them pursuant to Or. 1789
4 (§15-828), eventually conducting over four hundred such seizures during 2023.
5 Later, in the fall of 2023, after the City had enacted Or. 1925 and its severely
6 punitive provisions, Plaintiff was forced to shift still substantially more resources
7 to the City to address its mounting attacks on sidewalk vendors. This required,
8 among other things, that Plaintiff assign multiple additional staff members on a
9 daily basis to ensure that City vendors learned of the City’s heightened
10 enforcement actions and understood their consequences as well as mobilizing other
11 City residents to petition the City Council in support of the City vendors³ and
12 conducting numerous media interviews raising Plaintiff’s concerns over the City’s
13 unlawful conduct, which was gaining attention in nearby cities. Thereafter, as time
14 passed and the City’s sidewalk vendor population has dwindled further due to the
15 City’s actions, Plaintiff is continuing its support for the City’s vendors.
16 Unquestionably, Plaintiff has suffered “injuries of the sort that . . . are concrete and
17 particular for purposes of Article III” in that (1) Plaintiff has “expended additional
18 resources [it] would not otherwise have expended” and (2) “[b]ut for defendants’
19 violations,” Plaintiff could have “allocate[d] substantial resources to other
20

21
22 ³ Madison Hart, *Fontana council cuts off public comments as community lambastes*
23 *new vendor rules*, San Bernardino Sun, Oct. 26. 2023,
24 [https://www.sbsun.com/2023/10/25/fontana-council-cuts-off-public-comments-as-](https://www.sbsun.com/2023/10/25/fontana-council-cuts-off-public-comments-as-community-lambastes-new-vendor-rules/)
25 [community-lambastes-new-vendor-rules/](https://www.sbsun.com/2023/10/25/fontana-council-cuts-off-public-comments-as-community-lambastes-new-vendor-rules/) (accessed 8/6/2025) (“Nearly 130 street
26 vendors, community activists and residents marched up to and inside Fontana City
27 Hall Tuesday evening, Oct. 24, to protest the ordinance targeting any vendor who
28 does not possess or display a valid health permit. . . . ‘We’re hoping a lot of people
will turn out to not only tell Fontana that they can do better, and that they need to
listen to the community voice, but (that) they’re also telling the rest of the region
that criminalizing street vendors is right,’ . . . a director for *Inland Coalition for
Immigrant Justice* said”).

1 activities central to [its] mission[.]” *National Council of La Raza*, 800 F.3d at
2 1040.

3 20. Associational standing. While associational standing allows an
4 organization to sue to redress its members’ injuries without any injury to itself, the
5 organization must “allege that its members, or any one of them, are suffering” an
6 “immediate or threatened injury” as a result of the defendant’s conduct. *Hunt*, 432
7 U.S. at 342-43. As set forth in *Coalition on Homelessness v. City & County of San*
8 *Francisco*, 758 F. Supp. 3d 1102, 1122-23 (N.D. Cal. 2024), the organization
9 must make “specific allegations establishing that at least one identified member
10 had suffered or would suffer harm,” although this “does not necessarily require the
11 operative complaint to identify an injured member by name.” *Id.* (quoting
12 *Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal. Dep’t of*
13 *Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013)). As further held by the Ninth
14 Circuit in *Vasquez Perdomo*, a recent case involving extensive patrols by federal
15 immigration agents seeking undocumented workers in the Southern California
16 area, “[w]here it is relatively clear, rather than merely speculative, that one or
17 more members have been or will be adversely affected by a defendant’s action, and
18 where the defendant need not know the identity of a particular member to
19 understand and respond to an organization’s claim of injury,’ the organization is not
20 required to ‘identify by name the member or members injured’ to establish
21 associational standing.” 148 F.4th at 676 (quoting *Nat’l Council of La Raza*, 800
22 F.3d at 1041).⁴ The remaining two elements of associational standing are
23

24 ⁴ Just as in *Vasquez Perdomo* where the “intense fear of discriminatory stops” by
25 immigration agents “may prevent the association . . . members from active
26 participation in the lawsuit,” 148 F.4th at 677, in today’s tumultuous time and place
27 and where sidewalk vendors may be equally concerned of being named or
28 recognized in court proceedings in this lawsuit, there are strong reasons why “the
defendant need not know the identity of a particular member to understand and

1 straightforward. These are one, that the “interests [the organization] seeks to
2 protect are germane to the organization’s purpose,” and two, that “neither the claim
3 asserted nor the relief requested requires the participation of individual members in
4 the lawsuit.” *Hunt*, 432 U.S. at 343. In this case, the first of these is self-evident
5 and the second is plainly satisfied because the relief that Plaintiff seeks here is
6 limited to a declaratory judgment and/or injunctive relief.⁵

7 21. The Defendants are as follows:

8 (a) Defendant City of Fontana is a municipal corporation and
9 general law city. The City, through its City Council, its governing legislative body,
10 adopted the Or. 1789 and Or. 1925 that regulate sidewalk vending within its
11 boundaries and contain myriad unlawful provisions violating the United States
12 Constitution and laws of the State of California. The City has utilized both City
13 officers and 4Leaf personnel to implement these provisions.

14 (b) Defendant 4Leaf is a California corporation with its principal
15 place of business in Pleasanton, California. It has, among others, an office in San
16 Bernardino, California. According to its website, 4Leaf “specialize[s] in

17 _____
18 respond to an organization’s claim of injury.” *Nat’l Council of La Raza*, 800 F.3d
19 at 1041; *Coal. on Homelessness*, 758 F. Supp. 3d at 1122.

20 ⁵ Plaintiff has identified two of its members who suffered serious harms
21 attributable to Fontana, referred to by initials – (1) A.M. who has vended since
22 2022: City agents initially seized A.M.’s perishable goods and disposed of them
23 as often as three times a day; A.M. sought permits but City refused and threatened
24 jail time for vending; later, near Christmas 2023, City agents confiscated A.M.’s
25 vending cart equipment and said that there was a 30-day waiting period; when
26 A.M. went to recover the cart, A.M. could not pay the fine; since 2024, A.M. is
27 vending elsewhere but would return to Fontana if City had acted properly and (2)
28 A.C., after starting vending, A.C. was told by Fontana officers to go elsewhere;
A.C. also found Fontana permit requirements impossible to meet, particularly
insurance -- even restaurants could not pay for that insurance; A.C. has left the
City, but has seen City agents throw away vendor food; A.C. believes it is not
feasible to sell in Fontana).

1 construction projects” for municipalities, and its services are largely focused upon
2 such projects. Company Profile, 4Leaf, Inc., [https://www.4leafinc.com/company-](https://www.4leafinc.com/company-profile/)
3 [profile/](https://www.4leafinc.com/company-profile/) (last accessed on 8/6/2025). In the fall of 2023, 4Leaf entered into a
4 contract with the City to assist with regulating sidewalk vending by providing the
5 City with Code Enforcement Officers on six days and evenings per week. Under
6 this contract, 4Leaf has taken over from City officers the role of enforcing the
7 City’s sidewalk vending ordinances challenged herein.

8 (c) Defendant Craig Tole is 4Leaf’s Vice President for
9 Community Development and Project Manager for 4Leaf’s services provided to
10 the City. On information and belief, Mr. Tole has played a central role in obtaining
11 and managing the City’s contract.

12 (d) Defendant Pete Roque is 4Leaf’s Director of Code
13 Enforcement. As the offsite manager for the City contract, he is responsible for the
14 management and training of 4Leaf code enforcement officers as well as the day-to-
15 day administration of 4Leaf’s activities addressing sidewalk vending in the City.

16 22. Plaintiff is currently unaware of the true names and capacities of the
17 Defendants sued as John Does 1-40 and therefore sues those parties by these
18 fictitious names. Plaintiff will amend this complaint to allege the true names and
19 capacities of these persons once they have been ascertained. Plaintiff is informed
20 and believes, and on this basis alleges, that each of these Defendants is responsible
21 in some manner for the legal violations set forth in the Complaint.

22 FACTUAL ALLEGATIONS

23 I. California’s Legalization of Sidewalk Vending and the City of 24 Fontana’s Imposition Of Unlawful Practices Violating Sidewalk Vendor 25 Rights.

26 23. Sidewalk vendors sell food or merchandise from “a pushcart, stand,
27 display, pedal-driven cart, wagon, showcase, [or] rack . . . or from one’s person,
28 upon a public sidewalk or other pedestrian path..” Cal. Gov’t Code §§ 51036(a).

1 Sidewalk vendors have been a staple of California’s culture since before statehood,
2 but by the early 20th century cities and towns across the State began enacting strict
3 regulations that often treated these vendors’ operations as unlawful. Beginning in
4 the 1980s, cities such as Los Angeles saw an increase in sidewalk vending,
5 particularly among recent immigrant communities and often as a matter of
6 economic survival.⁶ Nichole Heil, *Increasing Equity in Los Angeles’ New Street*
7 *Vending Program*, at 5 (June 1, 2019) (Master’s capstone, UCLA). Over this
8 period, the growth in sidewalk vendor populations in California cities also gave
9 rise to concerns regarding vendors’ presence and operations. By the 1990s,
10 misdemeanor arrests of sidewalk vendors had increased substantially, a fact
11 “attributed to nearby storefronts complaining about [the] vendors.” *Id.* In addition
12 to such complaints, sidewalk vendors have long been viewed with distrust or
13 animus because of their race, ethnicity or immigration status, and are especially
14 vulnerable due to their visibility on the streets. *Id.* (“fears of racism and
15 harassment [have] kept street vendors in the shadows for the better part of the 20th
16 century”).

17 24. Despite persistent efforts to restrict sidewalk vending during this
18 period, its significance within California’s economy has grown steadily. As a 2015
19 study evaluating the “economic and geographic impact of . . . street vendors” in
20 Los Angeles reported:

21 Street vending is a \$504 million industry in Los Angeles.
22 Every year, 50,000 microbusinesses set up shop on the
23 sidewalks of the city, according to the Bureau of Street
24 Services. Three-quarters sell merchandise, such as

26 ⁶ Dick Carpenter, *UPWARDLY MOBILE, STREET VENDING AND THE*
27 *AMERICAN DREAM*, at 6 (Institute of Justice, 2015) (“For much of our nation’s
28 history, street vending . . . has been a way for lower-income workers, particularly
new immigrants, to make a living and climb the economic ladder”).

1 clothing and cell phone accessories. The other 10,000
2 sell bacon-wrapped hotdogs, tamales, and ice cream

3 Yvonne Yen Liu, Patrick Burns, & Daniel Flaming, SIDEWALK STIMULUS:
4 ECONOMIC AND GEOGRAPHIC IMPACT OF LOS ANGELES STREET VENDORS 4
5 (Economic Roundtable, 2015) (“As Los Angeles street vendors sell food and goods
6 to passersby, the multiplier effects from the supplies they purchase and the income
7 they spend accumulate and reverberate through the local economy”); *e.g.*, D.
8 Carpenter, *supra* note 5, at 5 (in-depth study of “vendors’ contributions to the New
9 York City economy” amount to “an estimated 17,960 jobs, \$192.3 million in wages
10 and \$292.7 million in value added,” including “an estimated \$71.2 million to local,
11 state and federal tax coffers”). Over time, the growing statewide economic
12 benefits of sidewalk vending—along with the essential economic support it
13 provides for immigrant and economically disadvantaged communities—drew the
14 attention of social scientists, activists, politicians, and eventually, State lawmakers.
15 Nonetheless, it took years of organizing and campaigning by sidewalk vendors to
16 win significant protections for themselves and their operations.

17 **A. California’s Legislature Imposes Statewide Standards on Local**
18 **Government Regulation of Sidewalk Vending: SB-946 and SB-972.**

19 25. Over the last eight years, the California Legislature has enacted two
20 transformative statutes that limit how local governments may regulate sidewalk
21 vending. The first was SB-946, enacted in September 2018, which (1)
22 decriminalized sidewalk vending throughout the State, (2) established a
23 comprehensive framework of state-wide standards that local governments must
24 observe in regulating sidewalk vendors, and (3) prescribed the penalties that local
25 governments may lawfully impose upon vendors for violations of their sidewalk
26 vending regulations. The second was SB-972, enacted in September 2022, which
27 recognized sidewalk vendors as legitimate retail food providers through a new
28 legal category added to the California Retail Food Code – the “compact mobile

1 food operation” – and which ended the treatment of sidewalk vendors selling food
2 as a misdemeanor offense. Through these steps, the California Legislature sought
3 to end the discriminatory treatment of sidewalk vendors and enable this long-
4 marginalized community to join fully and legally in the State economy. SB-946, §
5 1(a), 1(a)(6), 2018 Cal. Stat. ch. 459 (2017-2018 Reg. Sess.); SB-972 (adding
6 Chapter 11.7 to Part 7 of Division 104 of the California Health & Safety Code),
7 2022 Cal. Stat. ch. 489 (2021-2022 Reg. Sess.).

8 26. To achieve its goals in SB-946, the Legislature adopted an array of
9 provisions that expressly prohibit local governments, including the City of
10 Fontana, from “regulat[ing] sidewalk vendors, except in accordance with” that
11 statute’s provisions. Cal. Gov’t Code § 51037(a) (“A local authority shall not
12 regulate sidewalk vendors except in accordance with Sections 51038 and 51039”
13 of the Government Code); *id.* § 51038(b) (“A local authority’s sidewalk vending
14 program shall comply with all of the following standards”); *id.* § 51039(a)(1), (c)
15 (prohibiting local governments from treating violations of their sidewalk vending
16 regulations as misdemeanors and requiring that such violations be “punishable
17 only by” a prescribed range of administrative fines). To leave no doubt of this, the
18 Legislature made explicit legislative findings determining that the sidewalk vendor
19 issues which SB-946 addressed are “matters of statewide concern” and that its
20 provisions “appl[y] to any city, county, or city and county” in the State. SB-946, §
21 (a)(1)(6).

22 27. While some of SB-946’s provisions are unconditional – for example,
23 its prohibition of sanctions for sidewalk vending violations other than prescribed
24 administrative fines – other provisions bar local governments from imposing
25 restrictions on particular categories of vendor activities unless the restrictions are
26 justified by an “objective health, safety, or welfare concern[.]” that is “directly
27 related” to the vendor conduct. Cal. Gov’t Code § 51038(b), (c); *see id.* §
28 51039(a)(1). This “objective health, safety, or welfare concern” requirement lies at

1 the heart of SB-946’s regulation of local governments’ vending programs. Where
2 this standard applies, any “health, safety, or welfare concern” that a local
3 government offers to justify a particular vendor restriction must be established by
4 “objective” facts⁷ demonstrating that such restriction is necessary to address a
5 “health, safety, or welfare” concern of significant importance to the public. *Id.* §
6 51038(c). SB-946 also forbids local governments from justifying a vendor
7 restriction by citing “perceived community animus” or the “economic competition”
8 between vendors and local merchants as an “objective health, safety, or welfare
9 concern.” *Id.* § 51038(e). Through these provisions, the Legislature has
10 proactively protected vendors from local governments’ discriminatory or
11 prejudicial enactments not needed to protect the public at large.

12 28. As to SB-972, the Legislature, by incorporating that statute’s
13 provisions into the California Retail Food Code (Cal. Health & Safety Code,
14 Division 104, Part 7), turned the food safety measures applicable to sidewalk
15 vendors over to the State Department of Public Health (the “Department”) and
16 certain lawfully designated local health agencies. *See* Cal. Health & Safety Code,
17 §§ 113763, 113773 (defining these agencies). Through this step, it is the
18 Department of Public Health and the designated local health agencies, and not the
19 local cities, that are tasked with “safeguard[ing] public health and provid[ing] to
20 consumers food that is safe, unadulterated, and honestly presented . . .” Cal.
21 Health & Safety Code § 113703; *see also id.* § 113705 (Legislative finding that
22 “the public health interest requires that there be uniform statewide health and
23 sanitation standards [governing] retail food facilities”). The Retail Food Code,
24

25
26 ⁷ In this context, “objective” denotes known or provable facts, data or
27 documentation as opposed to assumptions, suppositions, or statements unsupported
28 by known facts. *E.g., Webster’s Third New International Dictionary*, 1555-56
(1981) (Objective: “observable or verifiable, especially by scientific methods . . .
involving the use of facts without distortion by personal feelings or prejudices”).

1 moreover, has designated its “[e]nforcement agenc[ies]” as the Department itself or
2 the “local health agency having jurisdiction over [a] food facility,” a designation
3 that does not include the City of Fontana. *E.g.* Cal. Health & Safety Code §
4 113773.

5 29. SB-972, in addition to ending the criminalization of sidewalk vendors
6 selling food as a misdemeanor, adopted the category of “compact mobile food
7 operation” (“CMFO”) for vendors operating from “a pushcart, stand, display,
8 pedal-driven cart, wagon . . . or other nonmotorized conveyance.” Cal. Health &
9 Safety Code § 113831(c). Under this category, vendors may legally sell a wide
10 range of foods under guidelines and requirements specified in the Code, which
11 govern food sales, preparation, storage, sanitation, equipment and the like.⁸
12 Vendors are also subject to permitting requirements and “routine inspections or
13 inspections on the basis of a consumer complaint” by an appropriate enforcement
14 agency – here, the San Bernardino County Department of Environmental Health
15 Services (“DEHS”). Cal. Health & Safety Code § 114368.1(b)(2). Also, as in SB-
16 946, SB-972 prohibits its designated enforcement agencies from imposing
17 sanctions on sidewalk vendors for violations of the CMFO regulations beyond a
18 specified range of administrative fines. Cal. Health & Safety Code § 114368.8(a),
19 (c), (d).

20 30. Both SB-946 and SB-972 are comprehensive state-wide enactments
21 that overcome, and preempt, local governments’ conflicting enactments. As held
22 by the California Supreme Court, when a city’s “local legislation conflicts with
23 state law, it is preempted by such law and is void.” *Sherwin-Williams Co. v. City*
24

25
26 ⁸ *E.g.*, Cal. Health & Safety Code § 113818(a) (listing the types of “limited food
27 preparation” potentially available for CMFO treatment, including food prepared by
28 “[h]eating, frying, baking, roasting, . . . or [the] assembly of nonprepackaged
food.”)

1 of Los Angeles, 4 Cal. 4th 893, 897 (1993) (citation omitted); see *Am. Fin. Servs.*
2 *Ass'n v. City of Oakland*, 34 Cal. 4th 1239, 1251 (2005); see *infra*, pp. 45-49

3 **B. Responding to the State’s Legislation, the City of Fontana**
4 **Incorporates Unlawful Provisions into Its Vending Ordinance.**

5 31. On February 12, 2019, the Fontana City Council adopted its
6 Ordinance 1789, purportedly to comply with SB-946, and even attaching a copy of
7 that statute as part of the Ordinance’s official version. Or. 1789 (amending Chapter
8 15, Article XVII of the FMC) (Art. XVII § 15-818 – 15-828).⁹ But while some of
9 its provisions track those of SB-946, others do not.

10 32. The two most pertinent provisions in conflict with SB-946 are (1) Or.
11 1789, § 15-828, which purports to authorize City officers to “seize as evidence any
12 item used [by a sidewalk vendor] in the commission of a violation of any
13 provision” of the City’s sidewalk vending Article, and (2) Or. 1789, §15-820,
14 which, *inter alia*, imposes three requirements on sidewalk vendors to obtain a local
15 vending permit:

- 16 (a) The purchase of a costly insurance policy that includes multi-million-
17 dollar coverage provisions (ranging from \$1 million to \$2 million per
18 occurrence) purportedly needed to protect the City (§ 15-
19 820(A)(10));
- 20 (b) Yearly purchases of a LiveScan background check by the California
21 Department of Justice intended to monitor sidewalk vendors’
22 purported “risks to children” when operating in public areas (§ 15-
23 820(B); see Or. 1789, 11th Whereas cl.); and
- 24 (c) Vendors’ agreement to utilize public sidewalks “at [their] own risk”
25 and without any steps by the City “to ensure public property is safe
26 or conducive to sidewalk vending” (§ 15-820(A)(15)).

27 ⁹ When adopted, Ordinance 1789 served to repeal and replace the then existing
28 Article XVII which addressed another subject. Later, when Ordinance 1925 was
adopted, its impoundment provisions were incorporated into Article XVII as well.

1 These onerous and unlawful requirements, which the City does not require for
2 other small businesses operating in its jurisdiction, have contributed significantly
3 to local sidewalk vendors’ inability to apply for a local vending permit.

4 33. The City’s unlawful seizures of vendor property. While City officers
5 initially used Or. 1789, § 15-828 only sparingly, if at all, its enforcement escalated
6 substantially over time. According to a City report, by January 2022, its “Code
7 Compliance teams [had begun] the enforcement” of this provision to “confiscate[e]
8 [vendors’] perishable goods” – purportedly to “protect public health” – and
9 confiscations continued to grow thereafter. City of Fontana, *Impacts of Unlicensed*
10 *Street Vending in Fontana*, [https://www.Fontanaca.gov/3641/Impacts-of-](https://www.Fontanaca.gov/3641/Impacts-of-Unlicensed-Vending-)
11 [Unlicensed-Vending-](https://www.Fontanaca.gov/3641/Impacts-of-Unlicensed-Vending-) (accessed 8/6/2025). By 2023, City officers reportedly
12 “confiscated [vendors’] perishable goods over 400 times,” and comments from the
13 City’s community meetings confirm such confiscations. *Id.*; *see, e.g.*, City of
14 Fontana, Minutes of July 27, 2023 Area 2 Community Meeting, 2 (“Cynthia Gil
15 with Code Compliance advised we do street vendor details 3 times a week. We are
16 throwing away their items, but they keep coming back”), attached hereto as Exhibit
17 1.

18 34. The City’s utilization of Or. 1789, § 15-828 to seize sidewalk vendors’
19 property is unlawful. Even putting aside the Fourth, Fifth and Fourteenth
20 Amendment issues discussed below, vendors’ perishable goods seized by the City
21 clearly have not been used “as evidence” as required by the text of the provision
22 itself. Instead, after the City’s officers have seized the vendors’ goods, they
23 discarded those goods without using them for any evidentiary purposes. The
24 sidewalk vendors thereby lost their valuable merchandise for no lawful purpose,
25 with no opportunity to be heard and no recompense.

26 35. The City’s unlawful permit requirements. While SB-946 allows the
27 City to require sidewalk vendors to obtain local vending permits and provides a list
28 of provisions that permits may include, it expressly requires that any such

1 provisions must satisfy SB-946’s “objective health, safety or welfare” standard.
2 Cal. Gov’t Code § 51038(c) (allowing permit provisions only if they can be
3 justified as “directly related to objective health, safety, or welfare concerns”).
4 Here, however, none of the three provisions in question meet this standard. These
5 provisions require: (1) the purchase of a multi-million-dollar insurance coverage
6 policy typically reserved for large-scale commercial transactions,¹⁰ Or. 1789, § 15-
7 820(A)(10); (2) annual purchases of a background check purportedly needed to
8 address alleged “risks to children” created by vendors in public areas “frequented
9 by children,” Or. 1789, § 15-820(B); *see* Or. 1789, at p. 2, 11th & 12th Whereas
10 cls.; and (3) a waiver by sidewalk vendors of their rights when utilizing City
11 sidewalks that all other City residents enjoy, Or. 1789, § 15-820(A)(15). None of
12 these provisions are even remotely necessary to satisfy any “objective health,
13 safety, or welfare” concerns cognizable under SB-946. In adopting Or. 1789, the
14 City has – unsurprisingly and on information and belief – deterred vendors from
15 applying for local vending permits.

16 **C. Unsatisfied with Its Ordinance’s Results, the City Adopts a**
17 **Further Vending Ordinance and Hires Private Personnel to**
18 **Enforce Its Terms.**

19 36. In the fall of 2023, unsatisfied with Or. 1789’s results despite the
20 City’s increase in confiscation and enforcement, the City Council, Mayor Warren,
21 and other senior City officials adopted a new and still more aggressive strategy to
22 end what they viewed as a troubling problem. On October 24, 2023, the City
23 Council adopted a new ordinance – which became Or. 1925 – adding substantial
24 new provisions to the City’s sidewalk vending Article and retaining 4Leaf to

25
26 ¹⁰ By comparison, the City’s contract with 4Leaf – a private company the City pays
27 more than half a million dollars to enforce the City’s sidewalk vending Article –
28 requires that 4Leaf provide coverage amounts of the same level (between \$1
million to \$2 million per occurrence) as those required by Or. 1789 for a single
sidewalk vendor selling goods on the street.

1 supply contracted personnel to replace City officers in enforcing the new
2 restrictions. *See, e.g.*, Or. 1925.

3 37. Or. 1925’s first component, titled the “Enforcement Obstruction
4 Consequences” (“EOC”) provision, created a new criminal misdemeanor offense
5 under which sidewalk vendors who “interfere[d] in any way” with City officials
6 engaged in their duties would face “fine[s] of not more than \$1,000 or . . .
7 imprisonment” for up to six months. Or. 1925, § 1-14. Its second component
8 added an “Impoundment” provision to the City’s sidewalk vending Article,
9 purportedly authorizing “[a]ny City official” to “impound a Sidewalk Vendor’s
10 vending cart, equipment, food, utensils, goods, flowers, toys, furniture, or
11 merchandise” used “in violation of” that Article for any of eleven enumerated
12 vending offenses, nine of which are challenged here.¹¹ Or. 1925, § 15-829(b); *see*
13 *infra*, pp. 25, 27 & n.10. Under this provision, once a vendor’s property is seized,
14 all items that “are perishable and/or cannot be safely stored” are to be
15 “immediately dispose[d] of” and the remaining items “held by the City for not less
16 than 30, nor more than 60, calendar[] days” after the impoundment. *Id.* §15-
17 829(d)-(e).

18 38. At the same October meeting, the City Council and Mayor also
19 approved the new contract with 4Leaf. This contract, signed November 14, 2023,
20 committed the City to pay \$644,498 for 4Leaf’s services over six months, subject
21 to further extension. City of Fontana Professional Services Agreement, BS-24-5-
22 SP-1 (“Contract”), attached hereto as Exhibit 2. The City’s requirements for
23 4Leaf, set forth in the Contract’s “Scope of Work,” call upon 4Leaf to “provide
24 contracted Code Enforcement Officers (CCEO)” to the City to address its issues
25 with “all non-permitted sidewalk vendors.” Contract, at Exhibit A. To accomplish
26

27 ¹¹ Of the eleven impoundment provisions included in Or. 1925, two (§ 15-
28 829(b)(7) and § 15-829(b)(10)) are not challenged here because other statutes or
regulations allow the City to address the same conduct.

1 this, the City agreed to provide 4Leaf with the “locations” of the targeted vendors.
2 *Id.* For those vendors “continu[ing] to operate without proper[] permits” after an
3 initial warning, the City directed 4Leaf personnel to “confiscate all
4 perishable/nonperishable items” in their possession and then process these items
5 pursuant to Or. 1925’s provisions. *Id.* The City also agreed that 4Leaf’s personnel
6 would “operate independently,” contacting the City’s police department “for
7 support only when necessary.” Contract, attaching City of Fontana, Action Report,
8 City Council Meeting, at 1. The City has thus given 4Leaf’s personnel free rein to
9 interact with sidewalk vendors with little or no City supervision or oversight.

10 **D. 4Leaf And Its Personnel Unleashed a Widespread Campaign to**
11 **Seize Vendors’ Property, Coupled with Unlawful Harassment.**

12 39. Public statements by City officials, including Mayor Warren, have
13 long displayed their hostility toward sidewalk vendors and a clear intent to exclude
14 them from the City. For instance, months before the City’s adoption of Or. 1925,
15 Mayor Warren used consecutive City Council meetings to characterize sidewalk
16 vendors as “illegal” and urge the public to boycott them. City of Fontana, City
17 Council Meeting Minutes (Feb. 14, 2023)¹² (Mayor Warren: “[T]here is something
18 everyone can do, and that is not to patronize those illegal street vendors”); City
19 Council Meeting Minutes (Feb. 28, 2023)¹³ (Mayor Warren: “DO NOT purchase
20 at these street vendors”). Mayor Warren reiterated this stance during the October
21 10, 2023 Council meeting, declaring:

22 “[I]t’s time for us to take a stand. We have tried
23 everything we can . . . to help people [sidewalk vendors]

24
25 ¹² City of Fontana, 2/14/2023 City Council Meeting,
26 https://fontana.granicus.com/player/clip/797?view_id=1&redirect=true (last
accessed 8/8/2025), time stamp at 0:58:00--1:02:25.

27 ¹³ City of Fontana, 2/28/23 City Council meeting,
28 https://fontana.granicus.com/player/clip/816?view_id=1&redirect=true (last
accessed 8/8/2025), time stamp at 2:24:26--2:26:43.

1 get legal So now it's time to grab a couple of
2 hammers. Done. Any more questions?"

3 City of Fontana, 10/10/2023 City Council Meeting, at 1:20:08 – 1:20:23

4 https://fontana.granicus.com/player/clip/897?view_id=1&redirect=true

5 (emphasis added). Clearly, these sentiments were promptly adopted by 4Leaf and
6 its personnel, whose ongoing conduct continues to reflect the City's hostility
7 toward sidewalk vendors.

8 40. Once 4Leaf operatives were tasked with enforcing the City's sidewalk
9 vending regulations, they have been, and are now, threatening sidewalk vendors
10 with the misdemeanor EOC provision and its criminal sanctions and seizing
11 vendors' goods and equipment.¹⁴ 4Leaf operatives confront individual vendors
12 unannounced and in organized groups, wearing all black garb and frequently
13 covering their faces with balaclavas, masks or hoods. They tell vendors they are
14 from the City but lack badges or nametags disclosing this information and often
15 refuse to identify themselves. They tell vendors that they have no right to vend in
16 the City and must leave immediately. This conduct is plainly intended to, and
17 does, intimidate vendors. Rather than educate vendors about the City's
18 requirements, as the City sometimes claims, 4Leaf operatives hand out only a short
19 bulletin, which largely advises vendors to get permits or else leave the City. Nor
20 when confiscating vendors' goods and equipment do 4Leaf operatives provide

21
22 ¹⁴ Anthony Victoria, KVCR 91.9 NPR, *Fontana credits 4Leaf for its effective street*
23 *vending law. Vendors say their livelihoods are hurt* (June 27, 2024),
24 [https://www.kvcrnews.org/2024-06-27/fontana-credits-4leaf-for-its-effective-](https://www.kvcrnews.org/2024-06-27/fontana-credits-4leaf-for-its-effective-street-vending-law-vendors-say-their-livelihoods-are-hurt)
25 [street-vending-law-vendors-say-their-livelihoods-are-hurt](https://www.kvcrnews.org/2024-06-27/fontana-credits-4leaf-for-its-effective-street-vending-law-vendors-say-their-livelihoods-are-hurt) (accessed 8/6/2025) (“At
26 a city-county conference, Fontana officials said 4Leaf has issued 500 warnings to
27 vendors, thrown away food at least 90 times and impounded equipment 43 times
28 since December [2023]”); Keith Miziguchi, KQED, *Fontana's New Street Vending*
Law Has Mixed Results (July 16, 2024),
<https://www.kqed.org/news/11995171/11995171-revision-v1> (accessed 8/6/2025)
(same).

1 vendors any opportunity to be heard in their own defense. Instead, they tell
2 vendors that in order to get their property back, they must wait 30 days and then
3 return to the City, paying an impound fine that varies from \$230 to \$300. For all of
4 these unlawful actions, 4Leaf operatives act under color of law and in the name of
5 the City.

6 **II. The Violations of Law Committed by the City and 4Leaf Pursuant to**
7 **the City’s Sidewalk Vending Ordinances and Their Implementation.**

8 41. The challenged violations – committed both by the City of Fontana
9 and by 4Leaf and its personnel – are:

10 * The City’s “Enforcement Obstruction Consequences” criminal
11 misdemeanor provision, which violates the First, Fifth, and Fourteenth
12 Amendments by employing intimidation to block vendors from exercising their
13 constitutional right to be heard;

14 * The City’s multiple impoundment provisions adopted in its
15 Ordinances 1789 and 1925 and their unlawful implementation by the City, 4Leaf
16 and 4Leaf’s personnel, which violate the Fourth, Fifth, and Fourteenth
17 Amendments and SB-946 and SB-972 by their unlawful and unreasonable
18 confiscations of vendors’ goods and equipment and failure to provide the
19 procedural protections required by the Due Process clause;

20 * The City’s adoption of onerous and unlawful requirements to obtain
21 local vending permits, which contravene SB-946’s “objective health, safety, or
22 welfare concerns” standard;

23 * The City’s disregard of the provisions of SB-946 and SB-972 which,
24 through their mandatory statewide standards and provisions, preempt and void the
25 City’s foregoing unlawful enactments and conduct.

1 **A. The City’s “Enforcement Obstruction Consequences”**
2 **Provision Violates the First, Fifth, and Fourteenth**
3 **Amendments and Criminalizes Sidewalk Vendors.**

4 42. During the October 10, 2023 City Council meeting in which Or. 1925
5 was introduced, the City’s code compliance inspector, Jason Barber, described the
6 EOC provision as necessary to “provide safety to staff” when enforcing the new
7 Ordinance. City of Fontana, 10/10/2023 City Council Meeting, at 56:34-36,
8 https://fontana.granicus.com/player/clip/897?view_id=1&redirect=true. Rather
9 than protect City staff, this provision is clearly intended to “criminalize[] . . .
10 [sidewalk vendors’] constitutionally protected speech” by silencing them when
11 their property is seized. *See City of Houston, Texas v. Hill*, 482 U.S. 451, 466
12 (1987). The City’s provision states:

13 It shall be unlawful for any person to obstruct, impede,
14 threaten, follow, intimidate, or interfere in any way with
15 any City official including a code compliance officer . . .
16 or other officers or employees of this City engaged in the
17 performance of their respective duties, job description,
18 and/or enforcement authority Such person shall be
19 guilty of a misdemeanor and, upon conviction thereof, . . .
20 shall be subject to a fine of not more than \$1,000 or by
21 imprisonment . . . for a period of not more than six
22 months, or by both

23 Or. 1925, § 1-14. The operative language – which makes it unlawful for sidewalk
24 vendors to “obstruct, impede, threaten, follow, intimidate or interfere in any way”
25 with any City employees in performance of their duties – mirrors provisions held
26 facially invalid under the First Amendment in several Supreme Court decisions,
27 including *Hill*, 482 U.S. at 453, *Lewis v. City of New Orleans*, 415 U.S. 130, 131-
28 33 (1974) and *Kolender v. Lawson*, 461 U.S. 352, 353-54 (1983). Underlying
these holdings are two separate constitutional doctrines.

43. First, the Supreme Court has consistently rejected state or local
enactments as facially overbroad under the First Amendment when they prohibit

1 speech that “‘interrupt[s]’ an officer” in carrying out his duties. *E.g. Hill*, 482
2 U.S. at 462. In *Hill*, the Court held that, where a city ordinance “prohibits speech
3 that ‘in any manner . . . interrupt[s]’ an officer,” “[t]he Constitution does not allow
4 such speech to be made a crime.” *Id.* at 462. The Court explained that (1)
5 “[c]riminal statutes must be scrutinized with particular care” and (2) “those
6 [statutes] that make unlawful a substantial amount of constitutionally protected
7 conduct may be held facially invalid even if they also have legitimate application.”
8 *Id.* at 459; *Lewis*, 415 U.S. at 131-34 (striking down a City of New Orleans
9 ordinance as “overbroad in violation of the First and Fourteenth Amendments and
10 . . . therefore facially invalid”). Here, by forbidding sidewalk vendors (as well as
11 others) from “obstruct[ing], imped[ing], threat[ing], . . . intimidat[ing] or
12 interfer[ing] in any way” with an official’s duties, the EOC criminalizes a broad
13 swath of constitutionally protected conduct under the First Amendment. *Hill*, 482
14 U.S. at 460-61 (“contrary to the city’s contention, the First Amendment protects a
15 significant amount of verbal criticism and challenge directed at police officers”).
16 This provision is constitutionally overbroad and facially invalid in its entirety.

17 44. Second, enactments of this kind are also “unconstitutionally vague
18 within the meaning of the Due Process clause of the Fourteenth Amendment.”
19 *Kolender*, 461 U.S. at 353-54; *see, e.g., Papachristou v. City of Jacksonville*, 405
20 U.S. 156, 162 (1972) (finding ordinance void for vagueness “both in the sense that
21 it ‘fails to give a person of ordinary intelligence fair notice that his contemplated
22 conduct is forbidden . . .’ [citation] and because it encourages arbitrary and erratic
23 arrests and convictions” under this overbroad ordinance).¹⁵ On its face, the EOC’s
24

25 ¹⁵ Where the ordinance being examined under “the due process doctrine of
26 vagueness” is “capable of reaching expression sheltered by the First Amendment,”
27 this doctrine “demands a greater degree of specificity than in other contexts.”
28 *Smith v. Goguen*, 415 U.S. 566, 573 (1974). Here, as described above, the EOC
provision plainly reaches substantial expression sheltered by the First Amendment
and therefore requires a higher degree of specificity.

1 language, which seeks to outlaw any and all conduct by sidewalk vendors to
2 “obstruct, impede, threaten, follow, intimidate, or interfere in any way” with a City
3 official’s duties, is already plainly so overly broad that persons of “of common
4 intelligence” would be “forced to guess” at its meaning. *E.g., Smith v. Goguen*,
5 415 U.S. 566, 574 (1974). But, as *Kolender* further held, “the more important
6 aspect of vagueness doctrine ‘is not actual notice, but the other principal element
7 of the doctrine – the requirement that a legislature establish minimal guidelines to
8 govern law enforcement.’ Where the legislature fails to provide such minimal
9 guidelines, a criminal statute may permit ‘a standardless sweep [that] allows
10 policemen, prosecutors, and juries to pursue their personal predilections.’” 461
11 U.S. at 358 (quoting *Smith*, 415 U.S. at 574, 575 (citation omitted)); *see id.* at 361
12 (holding that the statute in question “is unconstitutionally vague on its face because
13 it encourages arbitrary enforcement by failing to describe with sufficient
14 particularity what a suspect must do” to satisfy its terms). So also here, the City’s
15 overbroad and unconstitutionally vague language wholly fails to inform sidewalk
16 vendors as to how its terms could be satisfied. As such, the City’s EOC provision
17 fails in all respects.

18 **B. The City’s Impoundment Provisions and Their Implementation**
19 **Violate the Fourth, Fifth and Fourteenth Amendments.**

20 45. In enacting and implementing the impoundment provisions adopted in
21 Ordinances 1925 and 1789, the City ignored two fundamental constitutional
22 principles: (1) the Fourth and Fourteenth Amendments’ protection against
23 unreasonable interferences with one’s property, *Soldal v. Cook Cnty., Illinois*, 506
24 U.S. 56, 61-62 (1992) (“the [Fourth] Amendment protects property as well as
25 privacy”), and (2) the Fifth and Fourteenth Amendments’ guarantee of due process,
26 i.e., one’s “right to notice and an opportunity to be heard . . . ‘at a meaningful time
27 and in a meaningful manner,’” *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). As
28 detailed *infra*, these principles are violated by:

1 * Or. 1925, § 15-829, its lengthy impoundment provisions that purports
2 to authorize “[a]ny city official” to “impound a Sidewalk Vendor’s vending cart,
3 equipment, food, utensils, goods, flowers, toys, furniture, or merchandise . . . used
4 in violation of” the eleven provisions set forth in the City’s Article, nine of which
5 are challenged here; and

6 * Or. 1789, §15-828, the earlier impoundment provision that purports to
7 authorize “any peace officer or code enforcement officer” to “seize as evidence any
8 item used in” any violation of the City’s sidewalk vending Article.

9 *Unlawful Seizures of Property Violating the Fourth and Fourteenth*
10 *Amendments.*

11 46. Seizures of private property by a local government are without
12 exception subject to Fourth Amendment scrutiny. *Lavan v. City of Los Angeles*,
13 693 F.3d 1022, 1027 (9th Cir. 2012) (“a ‘seizure’ of property occurs when there is
14 some meaningful interference with an individual’s possessory interests” (quoting
15 *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). Unlike the majority of
16 Fourth Amendment cases, however, the City’s seizures of sidewalk vendors’
17 property take place “in a noncriminal context.” *Soldal*, 506 U.S. at 66-67 (the
18 Fourth Amendment’s “protection applies in the civil context as well”). When a
19 local government’s attempt to seize private property is not based upon its
20 “authority to . . . investigate criminal activity,” issues of probable cause and
21 warrants become beside the point, and the grounds which can lawfully authorize
22 such a seizure are substantially more limited. E.g., *Miranda v. City of Cornelius*,
23 429 F.3d 858, 863 (9th Cir. 2005). Courts, for example, have repeatedly blocked
24 local governments’ ability to conduct civil impoundments of homeless persons’
25 property and, under the rubric of the “community caretaking” doctrine, have
26 similarly restricted local governments’ ability to impound vehicles after their driver
27 is arrested for non-criminal violations unless such vehicles “jeopardize public
28 safety.” *Id.* at 864.

1 47. Here, under the Fourth and Fourteenth Amendments, the City is
2 barred from seizing sidewalk vendors’ property on two grounds: (1) due to SB-946,
3 SB-972 and other legal barriers, the City lacks any lawful authority to seize
4 vendors’ property under the total of ten of impoundment provisions challenged
5 here in Ordinances 1789 and 1925, and (2) applying the Fourth Amendment’s
6 fundamental reasonableness test to the present facts – balancing the “nature and
7 quality of the [City’s] intrusion” on sidewalk vendors’ possessory interests against
8 the “importance of the governmental interests” (*Jacobsen*, 466 U.S. at 125) – the
9 City’s interest in support of impoundment falls far short of the substantial harm
10 inflicted upon individual vendors.

11 **1. The City lacks lawful authority to impound sidewalk**
12 **vendors’ property under its Ordinance provisions.**

13 48. As shown below, each of the ten impoundment provisions challenged
14 here cannot lawfully authorize the City’s seizure of sidewalk vendors’ goods and
15 equipment.¹⁶

16 **a. Or. 1925, § 15-829(b)(3) – no local sidewalk vending**
17 **permit.**

18 49. This impoundment provision, which purports to allow the City to
19 seize goods and vending equipment from sidewalk vendors who lack a local
20 vending permit, directly conflicts with provisions of state law as enacted by SB-
21 946. *E.g.*, *Sherwin-Williams*, 4 Cal. 4th at 897 (when a city’s “local legislation
22

23 ¹⁶ Although each of these challenged provisions address a different subject matter,
24 the City’s language makes it clear that (1) in its overall “Impoundment
25 authorization” provision in Or. 1925 (§ 15-829(b)) no matter which of the nine
26 impoundment provisions is used to seize vendors’ property, the officer conducting
27 the impoundment is purportedly authorized to impound the “vending cart,
28 equipment, food, utensils, goods, flowers, toys, furniture, or merchandise” present
when the seizure occurs and (2) in the remaining impoundment provision in Or.
1789 (§ 15-828) that the officer is authorized to seize “any item used” by the
vendor when she allegedly commits any violation of the City’s vending Article.

1 conflicts with state law, it is preempted by such law and is void”). While SB-946
2 certainly allows local governments to require sidewalk vendors to obtain “a permit
3 for sidewalk vending” in their jurisdictions, Cal. Gov’t Code § 51038(c)(4), it does
4 not permit local governments to seize the property of sidewalk vendors simply
5 because they were found vending without such a permit. *Id.* § 51039(a)(1).
6 Instead, although SB-946 treats any “violation of a local authority’s sidewalk
7 vending program” as “punishable only” by administrative fines, it allows localities
8 to impose a higher fine on vendors found to be vending without a permit -- –
9 ranging up to \$1,000 for a third or subsequent violation. *Id.* §§ 51039(a)(1) &
10 51039(a)(3)(A)(i-iii). Thus, while SB-946 allows localities to impose a significant
11 monetary penalty for this violation, it forbids the imposition of the much larger
12 penalty of seizing vendors’ goods or equipment used to conduct their businesses.
13 These facts were unquestionably known to the City, and yet the City chose to
14 ignore them in adopting Or. 1925.¹⁷

15 **b. Or. 1925, § 15-829(b)(1) – no County health permit.**

16 50. This provision, which purports to allow the City to seize goods and
17 vending equipment from sidewalk vendors selling food while not possessing a
18 County health permit, is also unlawful. Here, following adoption of SB-972,
19 responsibility for sidewalk vending food safety was turned over to the Department
20 of Public Health and its designated local health agencies, and not cities like
21 Fontana. Cal. Health & Safety Code § 113705 (“The Legislature finds and
22

23
24 ¹⁷ Although the language of § 15-829(b)(3) refers to a “city business license” in
25 addition to a “valid . . . sidewalk vending permit” as a basis for an impoundment,
26 no other provision in the City’s Municipal Code provides that a vendor’s lack of a
27 city business license allows the City to confiscate a sidewalk vendor’s property of
28 any kind. And, because SB-946 treats any “violation of a local authority’s
sidewalk vending program” as “punishable only” by administrative fines, such an
administrative fine is the only other possible lawful sanction for this violation.
Cal. Gov’t Code § 51039(a)(1).

1 declares that the public interest requires that there be uniform statewide health and
2 sanitation standards for retail food facilities”); *see id.* §113773 (Retail Food Code
3 definition of “enforcement agency”); *id.* §113774 (same; definition of
4 “enforcement officer”). In San Bernardino County, it is DEHS, the lawful
5 “enforcement agency,” that issues the county health permits cited in Or. 1925 and
6 must enforce them. *See* Cal. Health & Safety Code §114368.8 (d) & (e) (when a
7 “compact mobile food operation is required to obtain a permit” it is provided by
8 the relevant “enforcement agency”).¹⁸ Further, when sidewalk vendors are required
9 to obtain such a permit, under SB-972 vendors found “operating without a permit”
10 can be sanctioned only by an administrative fine that is “not to exceed three times
11 the cost of the permit.” Cal. Health & Safety Code §114368.8 (c) & (d). Thus,
12 only the DEHS, and not the City, must enforce this Retail Food Code violation, and
13 the sanction is again only the specified fine, and not any form of impoundment.

14 51. Importantly, moreover, the Department of Public Health and/or DEHS
15 possess all necessary authority to inspect and, if needed, impound sidewalk
16 vendors’ “food, equipment, or utensils,” should this become necessary. Under Cal.
17 Health & Safety Code § 114393, it is the well-qualified health officers and
18 environmental specialists that are called upon to inspect and, where necessary to
19 safeguard food safety, to impound “food, equipment, or utensils.” *Id.*; *see id.* §
20 113774 (designated “enforcement officer” is required to carry out this function).

21
22 ¹⁸ Notably, in January 2022, the Fontana City Council acknowledged that the City
23 lacked any lawful basis to enforce the provisions of the Retail Food Code on its
24 own and sought to reverse this situation by adopting Municipal Code Amendment
25 (MCA) No. 22-01. While acknowledging that only DEHS had authority to
26 implement and enforce the Retail Food Code’s provisions, the Council inserted
27 language into its Municipal Code purporting to grant this same authority to the
28 City itself. Fontana, Cal. Ordinance 1882 (2022) (“Or. 1882”) (amending §§ 13-27
and 13-30): *see id.*, appended Action Report, at p. 1. But because only the
Legislature, and not City Council, can award such authority, this action was void
and without effect.

1 These Code provisions permit impoundment only where the following conditions
2 are met:

3 * The inspection is conducted by an enforcement officer with
4 appropriate qualifications to evaluate a vendor’s “food, equipment, or utensils”;

5 * The items inspected are “found to be, or suspected of being,
6 unsanitary or in such disrepair that food, equipment or utensils may become
7 contaminated or adulterated”;

8 * This finding is “[b]ased upon inspection findings or other evidence.”

9 *Id.*

10 52. Unlike the City’s unlawful impoundment provision challenged here,
11 (1) the DEHS or State Department of Health enforcement officer conducting the
12 inspection must be a trained expert, (2) the items in question must be found to be
13 “unsanitary or in such disrepair” that they could become “contaminated or
14 adulterated,” and (3) the officer’s determinations must be “based on inspection
15 findings or other evidence” before the vendor’s property can be impounded. Cal.
16 Health & Safety Code § 114393. Critically, none of these essential steps are
17 present in the City’s unauthorized and truncated process, especially given that they
18 are conducted by 4Leaf staff with no authorization or health enforcement training.

19 **c. Or. 1925, § 15-829(b)(2) -- seizure of unattended**
20 **property.**

21 53. This provision purports to permit the seizure of sidewalk vendor
22 property that “appear[s] to be *unattended or abandoned* on public or private
23 property for more than thirty . . . consecutive minutes” after “reasonable attempts
24 [are] made to locate” the owner “within the first fifty 50 feet” around that property.
25 Ord. 1925, § 15-829(b)(2) (emphasis added). However, California law will permit
26 a local government to seize unattended property ““only where [it] is intentionally
27 abandoned,” [and] not simply ‘unattended.’” *Lavan v. City of Los Angeles*, 797 F.
28 Supp. 2d 1005, 1012 (C.D. Cal. 2011), *aff’d*, 693 F.3d 1022, 1030 (9th Cir. 2012)

1 (lower court “correctly held that the Fourth Amendment’s protections extend to
2 Appellees’ unabandoned property”); *Kincaid v. City of Fresno*, 2006 WL 3542732,
3 at *37 (E.D. Cal. DeC. 8, 2006) (“[i]n California . . . an item is the property of its
4 owner unless the owner intentionally and voluntarily abandons it . . .”). Whether
5 property has been voluntarily abandoned “is determined by the intent of the
6 owner,” and the “inquiry should focus on whether, through words, act or other
7 objective indications, a person has relinquished a reasonable expectation of privacy
8 in the property at the time of the . . . seizure.” *Lavan*, 797 F. Supp. 2d at 1013
9 (quoting *United States v. Nordling*, 804 F.2d 1466, 1469 (9th Cir. 1986)). “Such a
10 determination is ‘to be made in light of the totality of the circumstances, and two
11 important factors are denial of ownership and physical relinquishment of the
12 property.’” *Id.* Accordingly, this provision’s purported authorization for officers to
13 (1) seize vendors’ property that is merely unattended, (2) decide that such property
14 is unattended after only “30 consecutive minutes” and after (3) making reasonable
15 attempts to locate the property owner limited only “within the first 50 feet of the
16 items” falls far outside the well-settled legal parameters for the seizure of such
17 property and plainly violates California law.

18 **d. Or. 1789, § 15-828 – seizure of vendor property as**
19 **evidence.**

20 54. This impoundment provision, adopted in Or. 1789, purports to
21 authorize the City’s officers to “seize as evidence any item used in . . . a violation
22 of” its sidewalk vending Article. But the City and its contractors have consistently
23 discarded the seized items without ever using them as evidence. *See supra*, pp.
24 21- 22. Even more fundamentally, the probable cause standard – which allows the
25 seizure of property to obtain evidence of a crime with sufficient cause – does not
26 apply to “non-criminal violation[s]” like those at issue here. *Miranda*, 429 F.3d at
27 862-64 & n.3 (“[t]he standard of probable cause is peculiarly related to criminal
28 investigations, not routine, non-criminal procedures”); *United States v. Cervantes*,

1 703 F.3d 1135, 1141 (9th Cir. 2012) (citing *Miranda* and rejecting the
2 government’s contention that a driver’s “commit[ing] a traffic violation” can be
3 “sufficient justification” to make a seizure of the driver’s vehicle “reasonable under
4 the Fourth Amendment”). Nor can the City subvert this rule by attempting to
5 criminalize vending violations. Cal. Gov’t Code § 51039(d)(1) (violations of a
6 local government’s vending rules or regulation “shall not be punishable as an
7 infraction or misdemeanor”); *see also* Or. 1789, § 15-827(F) (the City Ordinance
8 itself provides that “[a]ny violation of [the City’s sidewalk vending] Article shall
9 not be punishable as an infraction or misdemeanor”). Thus, even if the City were
10 in fact seizing vendors’ property as evidence of alleged violations of its vending
11 regulations (and it is not), such seizures have no lawful basis under the Fourth
12 Amendment.

13 **e. The remaining City impoundment provisions.**

14 55. The City’s other impoundment provisions challenged herein also fail
15 for the following reasons:

16 **(1) Impoundment provisions dependent on**
17 **other violations of the City’s sidewalk**
18 **vending Article -- Or. 1925, §§ 15-829**
(b)(4), (5), (9) & (c).

19 56. These four impoundment provisions all rest upon a sidewalk vendor’s
20 violation of one or more other provisions of the City’s sidewalk vending Article,
21 which then are used to seize the vendor’s goods and equipment. But SB-946
22 expressly forbids such a sanction, instead requiring a local government to treat any
23 “violation[s] of [its] . . . sidewalk vending program” as “punishable only” by
24 administrative fines. *E.g.*, Cal. Gov’t Code § 51039(a)(1). Moreover, even if SB-
25 946 did not bar the City from effectuating such seizures (it does), many of the
26 City’s provisions are quite minor (*e.g.*, no “balloons, flags, banners, on-site
27 furniture, or any freestanding signs” (Or. 1789, § 15-822(B)(8) or “[e]xterior . . .
28

1 display of . . . equipment, materials, goods, wares, or merchandise associated with
2 the vendor” (*id.* § 15-822(B)(10)), and the like, and could not rationally justify
3 seizing vendors’ property in any event.

4 57. Two of these provisions are based solely upon a vendor’s
5 accumulation of a specified number of violations of the City’s vending Article.
6 *E.g.*, Or. 1925, § 15-829(b)(9) (authorizing the seizure of a vendor’s property
7 whenever, within a 24-month period, the vendor has received “three or more
8 administrative citations” for violations of the vending Article) and Or. 1925, § 15-
9 829(c) (authorizing a “forfeiture impoundment” where a vendor has violated the
10 City’s vending Article twice or more over a 24-month period and received a notice
11 of violation). As such, these provisions provide no basis for a seizure of vendor
12 property.

13 58. The two remaining provisions rest upon a violation of the City’s
14 vending Article, coupled with a further condition. The first, § 15-829(b)(4), is
15 triggered by (a) a vendor’s violation of any part of the City’s sidewalk vending
16 Article and (b) the vendor’s “refus[al] or fail[ure] to provide identification.” The
17 second, § 15-829(b)(5), is triggered by (a) a vendor’s violation of any part of the
18 City’s vending Article, and (b) her “fail[ure] to remove items from public or
19 private property within” 30 minutes after being “instructed to do so by a City
20 official.” Neither condition justifies this outcome. As to a vendor’s purported
21 obligation to provide identification, *Brown v. Texas*, 443 U.S. 47, 52 (1979), holds
22 that “the guarantees of the Fourth Amendment do not allow” a City officer to
23 “stop[] and demand[] identification from an individual” when there is not a basis to
24 believe she is involved in criminal activity. Nor does a City officer possess the
25 authority to require a vendor to remove her property within 30 minutes merely
26 because of a pending vending violation. *E.g.*, *Florida v. Royer*, 460 U.S. 491,
27 497- 98 (1983) (person approached by police “may not be detained even
28 momentarily without reasonable, objective grounds for doing so”).

(2) Other impoundment provisions based on vendor conduct – Or. 1925, § 15-829(b) (6) & (8).

59. The final two impoundment provisions involve vendor conduct. Section 15-829(b)(6) purports to authorize the seizure of sidewalk vendors’ property when vendors “block[] or obstruct[] the free movement of pedestrians on sidewalks” and “fail[] to maintain a minimum of forty-eight inches (48”) of accessible path of travel” or otherwise violate the federal Americans with Disability Act of 1990 (“ADA”). Importantly, this provision largely overlaps with § 15-822(B)(2), adopted in Or. 1789, which (i) requires vendors to leave open only a “minimum of thirty-six inches [36”] of accessible path of travel” on the sidewalk (the minimum distance required in the ADA) – one foot less than required by § 15-829(b)(6) – and (ii) makes no reference to an ADA violation. Notwithstanding these limited additions to the earlier provision, § 15-829(b)(6) cannot escape SB-946’s requirement that local governments must treat all “violation[s] of [its] . . . sidewalk vending program” as “punishable only” by administrative fines, thereby precluding the City from seizing vendors’ goods and equipment. Gov’t Code § 51039(a)(1).

60. The last impoundment provision, § 15-829(b)(8), purports to authorize the seizure of sidewalk vendor property when vendors are in possession of “items” allegedly creating “an imminent and substantial danger or environmental hazard to the health, safety, or general welfare of the public.” This provision fails for at least three reasons. First, as explained with regard to § 15-829(b)(1) (no County health permit), the Department of Health and/or San Bernardino County DEHS are responsible to oversee sidewalk vendors’ compliance with the Retail Food Code when they are selling food from “a pushcart, . . . pedal-driven cart . . . or other nonmotorized conveyance.” Cal. Health & Safety Code § 113831(c). As part of the Retail Food Code, these State-sanctioned agencies, and not the City of Fontana,

1 administer the CMFO guidelines and regulations applicable to sidewalk vendors
2 that call for sidewalk vendors to utilize “food-related and utensil-related
3 equipment” that are either accredited by an accepted accreditation body or
4 evaluated for approval by the State agencies themselves, and are subject to “routine
5 inspections or inspection on the basis of a consumer complaint” by these agencies.
6 Cal. Health & Safety Code § 114368.5(e) & (f); *id.* § 114368.1(b)(2). Second, like
7 the City’s other impoundment provisions, § 15-829(b)(8) is governed by SB-946’s
8 requirement that local governments must treat all “violation[s] of [its] . . .
9 sidewalk vending program” as “punishable only” by administrative fines. Third,
10 this provision’s extremely broad language provides no meaningful definition or
11 criteria of what constitutes an item “creating an imminent and substantial danger or
12 environmental hazard to the health, safety, or general welfare of the public,”
13 particularly given that the provision itself cites as alleged examples of this
14 condition “flashing lights,” “animated devices or signs,” or “any radio,
15 loudspeaker, or other machine or device for the producing . . . of sound,” items
16 that can in no way can be considered to jeopardize the “health, safety, or general
17 welfare” of the public. *See* § 15-829(b)(8).

18 **2. The Fourth Amendment reasonableness test weighs**
19 **decisively in favor of sidewalk vendors and Plaintiff.**

20 61. The Fourth Amendment’s fundamental test for reasonableness –
21 namely, “balanc[ing] the nature and quality of the intrusion on the individual’s
22 Fourth Amendment interests against the importance of the governmental interests
23 alleged to justify the intrusion,” *Jacobsen*, 466 U.S. at 125 – readily demonstrates
24 that any “importance of the [City’s] governmental interests alleged” to justify its
25 seizures of vendor property falls far short of the harm inflicted by “the invasion of
26 the Plaintiffs’ possessory interests” in that property. *Fund for Empowerment*, 646
27 F. Supp. 3d at 1128-29; *e.g.*, *Lavan*, 797 F. Supp. 2d at 1015 (local government’s
28 seizures of homeless persons’ property “violated the Fourth Amendment despite an

1 inherent interest in keeping public areas clean and prosperous”); *Kincaid*, 2006 WL
2 3542732, at *40 (finding, as to homeless persons, that “the balance of hardships
3 weighs heavily in favor of Plaintiffs,” whose “interest in protecting against
4 unlawful seizure and immediate, irrevocable destruction of their personal property
5 including the loss of constitutional rights” is “an injury that the law will not
6 tolerate”); *see Santiago v. City of Los Angeles*, 2016 WL 7176694, at *6-8 (C.D.
7 Cal. Nov. 17, 2016) (rejecting Defendants’ claim that sidewalk vendors’ property
8 “posed an immediate threat to health” because a vendor “in possession of a cart, a
9 fruit tray, a utensil . . . does not violate the law”).

10 62. The City, on the other hand, has described its governmental objective
11 when impounding vendors’ property in its preface to Or. 1925, where it states that
12 adoption of the EOC misdemeanor offense and array of additional “impoundment”
13 provisions will “protect the City’s community by more effectively regulating [the]
14 sale of food, goods, and merchandise creating a health and safety danger.” Or.
15 1925, 4th Whereas clause. City officials further confirmed this objective in the
16 very City Council meeting in which Or. 1925 was proposed. *E.g.*, City of Fontana,
17 10/10/2023 City Council Meeting, at 55:05-12,
18 https://fontana.granicus.com/player/clip/897?view_id=1&redirect=true (Deputy
19 City Manager Phil Burum: “for the last two years . . . [the City has been]
20 combat[ing] the illegal, unlicensed, unpermitted sale of dangerous food”); *id.* at
21 1:19:51-1:20:01 (Mayor Warren: “This council is taking action to protect this
22 community. We have people that get on social media saying they got sick at this
23 location”); *see also* City of Fontana, *Impacts of Unlicensed Street Vending in*
24 *Fontana*, <https://www.Fontanaca.gov/3641/Impacts-of-Unlicensed-Vending> (by
25 May 2023, City officers were working “through the confiscation of perishable
26 goods[] to protect public health and safety”). Strikingly, however, at no time has
27 the City or its senior officials provided meaningful evidence that the presence of
28

1 sidewalk vendors in the City ever created any significant health or safety danger to
2 its citizens.

3 63. But this objective – if viewed as the City’s governmental interest –
4 plainly cannot justify *the City’s* seizures of sidewalk vendors’ valuable goods and
5 equipment as averting any such danger. Rather, it is the Department of Public
6 Health and, in San Bernardino County, DEHS that are responsible for
7 “safeguard[ing] public health” and, under SB-972 and the Retail Food Code,
8 regulating sidewalk vendors selling food. *Supra*, pp. 19, 33-34. Thus, even if
9 there were a meaningful “health and safety danger” in the City – and none has been
10 shown – the Legislature has tasked the Department and DEHS with redressing that
11 issue using their far greater regulatory authority, professional qualifications, and
12 expertise and available resources. *Supra*, pp. 34-35. Ignoring this, the City has
13 hired 4Leaf, whose business is construction, to enforce its unlawful restrictions.
14 Rather than address health concerns, the City has, through 4Leaf, indiscriminately
15 seized the property of any unpermitted vendors, regardless of whether a vendor is
16 selling food or goods entirely unrelated to food. *See* Contract, at Exhibit A (for
17 City vendors “continu[ing] to operate without proper[] permits” after an initial
18 warning, 4Leaf personnel are directed to “confiscate all perishable/nonperishable
19 items” in their possession). These facts leave little doubt that the purported
20 objective of the City’s campaign against sidewalk vendors is only pretextual.

21 64. Balanced against the City’s professed interest in seizing vendors’
22 property are the severe intrusions and harms that the City has imposed on sidewalk
23 vendors in the form of lost, damaged or destroyed personal property and lost
24 income and employment. *Ganwich v. Knapp*, 319 F.3d 1115, 1122 (9th Cir. 2003)
25 (citing “another rule of Fourth Amendment law: A seizure becomes unlawful when
26 it is ‘more intrusive than necessary. [citation omitted] The scope of a detention
27 ‘must be carefully tailored to its underlying justification’” (quoting *Florida v.*
28 *Royer*, 460 U.S. at 500, 504)); *see, e.g., Fund for Empowerment*, 646 F. Supp. 3d

1 at 1129 (homeless persons: “here the invasion of the Plaintiffs’ possessory interests
2 outweighs the City’s asserted justification. There is no indication that the City only
3 seizes items deemed to be health or public safety hazards, which would align with
4 their purported justifications”). Sidewalk vendors lead lives of difficult
5 circumstances, and the destruction of their goods and merchandise and deprivation
6 of their carts and other vending equipment for weeks or more subjects them to real
7 hardship. Furthermore, when vendors are repeatedly prevented from operating in
8 the City for meaningful spans of time, their absence deprives their customers of
9 goods and services they enjoy, ultimately eroding their customer base and the long-
10 term sustainability of their business. All taken together, therefore, the Fourth
11 Amendment’s reasonableness test tilts strongly in favor of the City’s sidewalk
12 vendors.

13 *Unlawful Seizures Violating the Fifth and Fourteenth Amendments and Due*
14 *Process.*

15 **3. The City and 4Leaf Personnel Deprive Sidewalk Vendors of**
16 **Due Process and a Notice and Opportunity to be Heard.**

17 65. The City, 4Leaf, and its personnel have also consistently violated the
18 Fifth and Fourteenth Amendments and Due Process clause in their treatment of
19 sidewalk vendors. “Any significant taking of property by the State is within the
20 purview of the Due Process Clause.” *Fuentes v. Shevin*, 407 U.S. at 86; *see, e.g.,*
21 *Lavan*, 693 F.3d at 1032 (“[a]s we have repeatedly made clear, ‘[t]he government
22 may not take property like a thief in the night; rather, it must announce its
23 intentions and give the property owner a chance to argue against the taking.’ This
24 simple rule holds regardless of whether the property in question is an Escalade or
25 an EDAR, a Cadillac or a cart.” *Id.* (quoting *Clement v. City of Glendale*, 518 F.3d
26 1090, 1093 (9th Cir. 2008)) (citation omitted; emphasis added). Here, the City
27 and its agents have repeatedly violated this and other requirements of the Due
28 Process clause.

1 66. Due Process violations begin as soon as the City’s officers or 4Leaf
2 personnel encounter a sidewalk vendor and, as typically happens, proceed to seize
3 his or her property without advance notice or an opportunity to be heard. As the
4 Supreme Court held in *United States v. James Daniel Good Real Property*: “[o]ur
5 precedents establish the general rule that individuals must receive notice and an
6 opportunity to be heard *before the Government deprives them of property.*” 510
7 U.S. 43, 48 (1993) (emphasis added). This is particularly true of seizures by
8 4Leaf personnel, who frequently refuse to identify themselves and instead
9 immediately forcibly seize the vendor’s property for disposal or impoundment.
10 After the seizure, the officer immediately disposes of “impounded items that are
11 perishable and/or cannot be safely stored” (Or. 1925, § 15-829(d)), leaving the
12 vendor with an outright loss and no recourse. *Lavan*, 797 F. Supp. 2d at 1017-18
13 (a city’s “practice of on-the-spot destruction of seized property” presents “an
14 enormous risk of erroneous deprivation”). The remaining property is “held by the
15 [C]ity for not less than 30, nor more than 60, calendar[] days” (Or. 1925, § 15-
16 829(e) and, if not claimed within that period, is also disposed of. Or. 1925, § 15-
17 829(j). Each of these steps by the City and 4Leaf personnel compound the
18 sidewalk vendors’ losses and underscore the City’s ongoing violations of the Due
19 Process clause.

20 67. Nor does the City offer sidewalk vendors any meaningful opportunity
21 for a post-seizure hearing. *Fuentes*, 407 U.S. at 81 (“If the right to notice and a
22 hearing is to serve its full purpose . . . it must be granted at a time when the
23 deprivation can still be prevented”). While sidewalk vendors may request an
24 administrative hearing before the City Manager (or designee) “within 15 calendar
25 days of the impoundment” (Or. 1925, § 15-829(g)), this post-seizure procedure in
26 no way provides vendors with a genuine opportunity to be heard ““at a meaningful
27 time and in a meaningful manner.”” *Lavan*, 797 F. Supp. 2d at 1017. In fact,
28 when 4Leaf personnel seize vendors’ property, they typically fail entirely to inform

1 vendors of any post-seizure opportunity to be heard, telling them only to wait 30
2 days and then pay the impound fee.

3 68. Even if an officer does inform a vendor of her ability to request an
4 administrative hearing, pursuing that option would provide little or no benefit.
5 Under Ord. 1925, § 15-829(g), “if successful in [the] appeal,” a vendor only (i)
6 receives back from the City their remaining goods or equipment “excluding any
7 items . . . immediately disposed of,” and (ii) is excused from the City’s impound
8 fee. But a vendor must pay the City’s “appeal fee” of \$345¹⁹ even to initiate such a
9 hearing. Moreover, the lengthy steps required thereafter would likely delay the
10 appeal’s resolution well beyond 60 days, during which the vendor – had she not
11 appealed – could have already reclaimed any remaining undestroyed property and
12 continued to operate her business. Or. 1789, § 15-826. To complete an appeal
13 involves (i) a 15-day period to request an appeal, within which the aggrieved
14 vendor must file a written appeal statement, after which (ii) the City clerk has ten
15 more days to transmit the written statement to the City manager, followed by (iii) a
16 hearing set no “later than 60 days” after the filing of the vendor’s written
17 statement. Or. 1789, § 15-826. Accordingly, even a successful appeal will likely
18 only result in the return of the vendor’s still remaining items at a later time than if
19 there was no appeal.

20 **C. The City’s Ordinances and Practices Are Barred by California’s**
21 **Statutory Framework for Sidewalk Vendors.**

22 69. In addition to supporting the federal claims discussed above, the State
23 Legislature’s enactment of SB-946 and SB-972 provides an independent basis to
24 invalidate the challenged provisions of the City’s Ordinances and their resulting
25 practices.
26

27 _____
28 ¹⁹ See City of Fontana, Appeal Checklist,
<https://www.fontanaca.gov/DocumentCenter/View/8248/Appeal---Checklist>.

1 70. The City is a general law city under the laws and Constitution of the
2 State of California. “Where local legislation conflicts with general law, the local
3 ordinance is void.” *Water Quality Ass’n v. Cnty. of Santa Barbara*, 44 Cal. App.
4 4th 732, 741 (1996); *see Am. Fin. Servs.*, 34 Cal. 4th at 1251; *Sherwin-Williams*, 4
5 Cal. 4th at 897. Here, because the challenged provisions in the City’s two
6 Ordinances clearly conflict with provisions in SB-946 and SB-972, they are
7 preempted on two separate grounds: (1) they have “enter[ed] an area either
8 expressly or impliedly fully occupied by” State law, and/or (2) they are
9 “contradictory or inimical [to State law].” *Am. Fin. Servs.*, 34 Cal. 4th at 1251.

10 71. On the first ground, the California Supreme Court has stated:

11 Whenever the Legislature has seen fit to adopt a general
12 scheme for the regulation of a particular subject, *the*
13 *entire control over whatever phases of the subject are*
14 *covered by state legislation ceases as far as local*
legislation is concerned.

15 *Id.* at 1253 (quoting *In re Lane*, 58 Cal. 2d 99, 102 (1962) (emphasis added)); *see,*
16 *e.g., Eastlick v. City of Los Angeles*, 29 Cal. 2d 661, 666-67 (1947) (when the
17 Legislature provides “a general scheme for the presentation of such liability claims
18 to be effective throughout the state . . . with respect to the subjects covered, the
19 [legislation] occupies the entire field and it impliedly precludes control to that
20 extent by municipal or local regulation”) (citation omitted). The “occupy the field”
21 standard is satisfied, moreover, where “the Legislature has expressly manifested its
22 intent to ‘fully occupy’ the area,” *Am. Fin. Servs.*, 34 Cal. 4th at 1252 (quoting
23 *Sherwin-Williams*, 4 Cal. 4th at 898), or where “there are clear indications of the
24 Legislature’s implicit intent to fully occupy the field of regulation.” *Id.* Among
25 the important indicia of the Legislature’s intent to occupy the field is when “the
26 subject is one which . . . requires uniform treatment throughout the state.” *Id.* at
27 1252.

1 72. Clearly, SB-946 and SB-972 satisfy the “occupy the field” ground for
2 State preemption. In the case of SB-946, the Legislature established a
3 comprehensive framework prescribing how local governments may formulate,
4 implement and enforce their sidewalk vending programs, and included provisions
5 expressly mandating local governments’ compliance. Cal. Gov’t Code § 51038(b)
6 (“A local authority’s sidewalk vending program shall comply with all of the
7 following standards”); Cal. Gov’t Code § 51039(a)(1) (“A violation of a local
8 authority’s sidewalk vending program . . . is punishable only by the following,”
9 i.e., sets of tiered tables of administrative fines). To eliminate any doubt, the
10 Legislature expressly stated that “[a] local authority shall not regulate sidewalk
11 vendors except in accordance with Sections 51038 and 51059.” *Id.* § 51037(a). In
12 SB-972, the Legislature adopted a similarly comprehensive framework governing
13 food sales, preparation, storage, sanitation and equipment – as well as inspections
14 and permitting – as set forth fully in the CMFO provisions of the Retail Food
15 Code. *E.g.*, Cal. Health & Safety Code, Division 104, Part 7. In doing so, the
16 Legislature chose to keep the authority to enforce these provisions with the
17 Department and local health agencies such as DEHS. Cal. Health & Safety Code
18 §§ 113773 & 113774. In each instance, SB-946 and SB-972 have adopted “a
19 general scheme for the regulation” of an important subject requiring statewide
20 treatment and thereby exercised “entire control over . . . the subject[s] . . . covered
21 by state legislation.” *Am. Fin. Servs.*, 34 Cal. 4th at 1253; *see Lane*, 58 Cal. 2d at
22 102 (“where the state has fully occupied the field, there is no room for additional
23 requirements by local legislation”).

24 73. On this ground for preemption, the California Supreme Court’s
25 decision in *Am. Fin. Servs.* is instructive. There, the Legislature enacted
26 comprehensive legislation combating predatory mortgage lending practices, and
27 the City of Oakland adopted its own ordinance seeking to regulate similar
28 practices. *Am. Fin. Servs.*, 34 Cal. 4th at 1244. Although both measures were

1 “similar in that they regulate[d] the same subject matter,” they “differ[ed] in
2 significant respects.” *Id.* at 1250. In particular, Oakland’s ordinance imposed
3 substantially more severe sanctions and assigned liability to a differing and larger
4 set of offenses. *Id.* (citing examples). Oakland argued that the State’s legislation
5 imposed only “statewide minimum standards, not statewide uniform standards for
6 subprime home mortgage lending,” leaving the field open for additional regulation.
7 *Id.* at 1251-52. The Supreme Court squarely rejected this argument. Citing the
8 State’s “comprehensive[] regulat[ion]” of mortgage lending, it held that, “[i]n
9 revisiting this area fully occupied by state law, the Ordinance undermines the
10 considered judgments and choices of the Legislature and is therefore preempted.”
11 *Id.* at 1254, 1257 (emphasis added). So too here. The City’s two sidewalk vending
12 Ordinances – particularly (1) the EOC provision, (2) the impoundment provisions,
13 and (3) the conditioning of permits on vendors’ acceptance of onerous provisions
14 that violate SB-946’s “objective health, safety or welfare concerns” requirement –
15 undermine the considered judgments and choices of the Legislature in SB-946 and
16 SB-972. They are therefore preempted.

17 74. As to the second ground, local legislation is also preempted when it is
18 “contradictory or inimical [to State law].” *Id.* at 1251; *e.g.*, *Chevron U.S.A. Inc. v.*
19 *County of Monterey*, 15 Cal. 5th 135, 145 (2023) (“local law is preempted as
20 ‘contradictory’ when it ‘cannot be reconciled with state law’”); *id.* at 139-40 (local
21 ordinance banning certain oil extraction activities was preempted by statewide
22 regulations allowing those activities); *see also Am. Fin. Servs.*, 34 Cal. 4th at 1251;
23 *Sherwin-Williams*, 4 Cal. 4th at 897. Here, each of the City’s challenged
24 provisions is preempted in this manner:

25 (a) The City’s EOC provision codifying a criminal misdemeanor
26 offense contradicts, and is preempted by, both SB-946 (Gov’t Code § 51039(d)(1)-
27 (2) (prohibiting local sidewalk vending provisions that are “punishable as an
28 infraction or misdemeanor”) and SB-972 (Health & Safety Code § 114368.8(b)

1 (any violation of the sidewalk vending provisions of the Retail Food Code “shall
2 not be punishable as an infraction or misdemeanor”));

3 (b) The City’s challenged impoundment provisions in Or. 1925
4 and Or. 1789 contradict, and are preempted by, the following:

5 Or. 1925, § 15-829(b)(3) preempted by Gov’t Code § 51039(a)(3)(A)
6 -- no local vending permit (i-iii); *see id.* at (a)(1);

7 Or. 1925, § 15-829(b)(1) preempted by Gov’t Code § 51039(a)(1)(A-
8 - no County health permit C) and Health & Safety Code § 114368.8(c)
& (d);

9 Or. 1925, § 15-829(b)(2) preempted by Gov’t Code § 51039(a)(1)(A-
10 -- seizure of unattended C) and California law, *e.g.*, *Lavan*, 797 F.
11 property Supp. 2d at 1012;

12 Or. 1789, § 15-828 -- preempted by Gov’t Code § 51039(a)(1)(A-
13 seizure of vendor property C) and *id.* at (d)(1);
as evidence

14 Or. 1925, §§ 15-829(b)(4), preempted by Gov’t Code § 51039(a)(1)(A-
15 (5), (9) & (c) – dependent C) and, additionally for § 15-829(b)(4),
16 on other violations of the *Brown*, 443 U.S. at 52, and § 15-829(b)(5),
17 City vendor ordinance *Florida*, 460 U.S. at 497-98;

18 Or. 1925, § 15-829(b)(6), preempted by Gov’t Code § 51039(a)(1)(A-
19 - blockage of free movement C);
of pedestrians

20 Or. 1925, § 15-829(b)(8) preempted by Gov’t Code § 51039(a)(1)(A-
21 - alleged substantial danger C) and Health & Safety Code § 114368.8(c)
22 or hazard

23 (c) The City’s requirement in Or. 1789, § 15-820 that sidewalk
24 vendors accept certain provisions to obtain local vending permits contradicts, and
25 is preempted by, SB-946’s “objective health, safety, or welfare concerns”
26 requirement.
27
28

1 **FIRST CAUSE OF ACTION**
2 **42 U.S.C. § 1983**
3 **Violation of First, Fifth and Fourteenth Amendments**
4 **(Against All Defendants)**

5 75. Plaintiff realleges and incorporates by reference each and every
6 allegation contained in the above paragraphs.

7 76. The City’s EOC provision establishes a purported criminal
8 misdemeanor offense for “any person [that] obstruct[s], impede[s], threaten[s],
9 follow[s], intimidate[s], or interfere[s] in any way with any City official[s] . . .
10 engaged in the performance of their . . . duties.” Or. 1925, §1-14. This provision
11 violates the U.S. Constitution in two separate ways. First, the Supreme Court has
12 consistently held that city ordinances that prohibit speech which “‘interrupt[s]’ an
13 officer” in conducting his or her duties are facially invalid under the First
14 Amendment. *Hill*, 482 U.S. at 459, 462; *accord Lewis*, 415 U.S. at 131-34.
15 Second, such ordinances fail when they are “unconstitutionally vague within the
16 meaning of the Due Process clause,” including (i) where they are so overly broad
17 that “‘men of common intelligence’ would be ‘forced to guess’ at their meaning
18 and/or (ii) they “fail to provide such minimal guidelines” and thus “may permit ‘a
19 standardless sweep [that] allows policemen, prosecutors, and juries to pursue their
20 personal predilections.’” *Kolender*, 461 U.S. at 353-54, 358; *Smith v. Goguen*,
21 415 U.S. 566, 574-75 (1974). This application of the Due Process Clause is
22 particularly relevant when an ordinance is “capable of reaching expression
23 sheltered by the First Amendment,” which is certainly the case here. *Goguen*, 415
24 U.S. at 573.

25 77. When enacted, the City’s EOC provision created a powerful
26 mechanism for the City to silence sidewalk vendors confronted while vending or
27 during subsequent proceedings. Faced with the prospect of a \$1,000 misdemeanor
28 fine or six months of imprisonment, no sidewalk vendor is at all likely to speak up
in defense of their legal rights as a vendor. Among the severe injuries, costs and

1 other harms that the EOC provision has inflicted on vendors are (a) intimidating
2 vendors into silence while City agents confiscate the vendor's essential equipment
3 and goods, (b) preventing vendors from demanding that the City return their seized
4 property (i) before the end of the 30 to 60-day impoundment period or (ii) refusing
5 to return the property at any time whatever and (c) forcing vendors out of the City
6 to vend in locations outside the City.

7 78. The Defendant City, by its adoption of the EOC provision and its
8 subsequent managing, directing, and instructing of City's officers and/or 4Leaf
9 personnel in its implementation, have violated, and continue to violate, the First,
10 Fifth and Fourteenth Amendments. Through these actions, the Defendant City has
11 attempted to treat the EOC provision as constituting an obligatory statute or decree,
12 policy and/or custom of the City and an acceptable course of action for its officers
13 and agents to pursue. *E.g., AE ex rel. Hernandez v. Cnty. of Tulare*, 666 F.3d 631,
14 636-38 (9th Cir. 2012); *see Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown*,
15 520 U.S. 397, 403-05 (1997). Moreover, the Defendant City, acting intentionally,
16 recklessly and/or with deliberate indifference to the consequences, has caused and
17 required Defendants 4Leaf, Craig Tole, Pete Roque and other 4Leaf personnel,
18 working under color of law and acting deliberately and recklessly, to use the EOC
19 provision to silence vendors while vendors' essential equipment and goods are
20 confiscated, prevent vendors from demanding that the City return their seized
21 property before the end of the 30 to 60 day impoundment period or at any time
22 whatever, and thereby drive vendors outside of the City. 520 U.S. at 405-06. In
23 addition, the decision of the Defendant City to allow 4Leaf, Craig Tole, Pete Roque
24 and other 4Leaf personnel to operate independently with little or no City
25 supervision has permitted 4Leaf and its personnel to utilize the EOC provision,
26 acting under color of law, to harass vendors, refuse to identify themselves, threaten
27 vendors that they have no right to vend in the City and must leave, and fail to
28 inform vendors of their rights. *See supra*, pp. 24-25.

1 79. Pursuant to 42 U.S.C. § 1983, Plaintiff is entitled to the following
2 relief:

3 a. In light of the actual controversy between the parties
4 concerning the EOC provision, a declaratory judgment that the EOC provision is
5 facially invalid, void, and in violation of the First, Fifth and Fourteenth
6 Amendments;

7 b. Injunctive relief barring all Defendants from invoking the
8 City’s EOC provision in violation of the First, Fifth and Fourteenth Amendments at
9 any time and under any circumstances. Such relief may initially take the form of
10 an initial or preliminary injunction, followed by a permanent injunction, or other
11 appropriate form of equitable relief.

12 **SECOND CAUSE OF ACTION**
13 **42 U.S.C. § 1983**
14 **Violations of Fourth, Fifth and Fourteenth Amendments**
15 **(Against All Defendants)**

16 80. Plaintiff realleges and incorporates by reference each and every
17 allegation contained in the above paragraphs.

18 81. The Defendant City, through the City Council and Mayor Warren, has
19 adopted two Ordinances containing impoundment provisions that purport to allow
20 the City’s officers or 4Leaf personnel to confiscate the property of sidewalk
21 vendors. The City has used these provisions very extensively:

22 * Or. 1925, enacted in October 2023, which purports to authorize “[a]ny
23 city official” to seize sidewalk vendors’ “vending cart, equipment, food, utensils,
24 goods, flowers, toys, furniture, or merchandise” used “in violation of” any of nine
25 impoundment grounds in this Ordinance challenged here (Or. 1925, § 15-829(b));
26 and
27
28

1 * Or. 1789, enacted in February 2018, which purports to authorize “any
2 peace officer or code enforcement officer” to “seize as evidence any item used in”
3 any violation of the City’s sidewalk vending Article. Or. 1789, § 15-828.

4 82. These provisions violate (i) the Fourth and Fourteenth Amendments,
5 which protect sidewalk vendors against unreasonable and unlawful seizures of
6 property (*e.g.*, *Soldal*, 506 U.S. at 61-62), and (ii) the Fifth and Fourteenth
7 Amendments, which guarantee vendors the right to notice and an opportunity to be
8 heard “at a meaningful time and in a meaningful manner” before their property is
9 seized (*e.g.*, *Fuentes* 407 U.S. at 80).

10 83. Under the Fourth and Fourteenth Amendments, the City is barred
11 from utilizing the challenged provisions to seize the property of sidewalk vendors
12 on two grounds. First, pursuant to California’s SB-946, SB-972 and other legal
13 barriers, the City lacks any lawful authority to seize vendors’ property under any of
14 the challenged provisions. *See supra*, pp. 32-40. Second, under the Fourth
15 Amendment’s balancing test for fundamental reasonableness, the City’s intrusion
16 upon vendors’ possessory interests in their personal property and the substantial
17 harm and injuries resulting from that intrusion far outweigh the City’s claimed
18 governmental interest in its challenged provisions. *See supra*, pp. 40-43.

19 84. In addition, any significant taking of property by the City falls within
20 the purview of the Fifth and Fourteenth Amendments and, in particular, the Due
21 Process clause. As the Supreme Court has repeatedly held, “[t]he government
22 may not take property like a thief in the night; rather, it must announce its
23 intentions and give the property owner a chance to argue against the taking.”
24 *Lavan*, 693 F.3d at 1032 (quoting *Clement*, 518 F.3d at 1093); *see Fuentes*, 407
25 U.S. at 81 (“If the right to notice and a hearing is to serve its full purpose . . . it
26 must be granted at a time when the deprivation can still be prevented”). Here, the
27 City and its agents have repeatedly violated, and continue to violate, these
28 constitutional requirements.

1 85. The City’s impoundment provisions have enabled City officers and
2 4Leaf operatives, acting under color of law, to unlawfully punish or sanction
3 sidewalk vendors by depriving them of essential equipment and goods. Initially,
4 City officers utilized § 15-828, adopted in Or. 1789, to confiscate and discard
5 vendors’ perishable goods without intending any evidentiary purpose which this
6 provision required, thereby stripping vendors of valuable property without
7 recompense. *See supra*, pp. 21-23. Later, after the City had enacted Or. 1925 and
8 entered into its 4Leaf contract, City officers and 4Leaf operatives have utilized the
9 Ordinance’s multiple challenged impoundment provisions to confiscate vendors’
10 “vending cart[s], equipment, food, utensils, goods, flowers, toys, furniture, or
11 merchandise” instead of only vendors’ perishable goods. *See supra*, pp. 23-24.
12 Among the severe injuries, costs and other harms that the City agents’ seizures of
13 property have inflicted on Fontana vendors are (a) vendors’ loss of goods and
14 equipment destroyed or discarded by City agents, (b) impoundment of vendors’
15 carts and other essential equipment, preventing them from conducting business for
16 weeks or more at a time, and (c) erosion of vendors’ customer base caused by
17 periods of non-operation, driving vendors out of Fontana and into other cities.

18 86. The Defendant City, by its adoption of the impoundment provisions
19 challenged here and their subsequent managing, directing, and instructing of the
20 City officers and/or 4Leaf personnel in their implementation, have violated, and
21 continue to violate, the Fourth, Fifth and Fourteenth Amendments. Through these
22 actions, the Defendant City has attempted to treat the City’s impoundment
23 provisions as obligatory statutes or decrees, policies and/or customs of the City and
24 an acceptable course of action for its officers and agents to pursue. *E.g., AE ex rel.*
25 *Hernandez*, 666 F.3d at 636-38; *see Bd. of Cnty. Comm’rs*, 520 U.S. at 403-05.
26 Moreover, the Defendant City, acting intentionally, recklessly and/or with
27 deliberate indifference to the consequences, has caused and required Defendants
28 4Leaf, Craig Tole, Pete Roque and other 4Leaf personnel working under color of

1 law and acting deliberately and recklessly, to utilize these impoundment provisions
2 to punish or sanction sidewalk vendors by unlawfully seizing their essential
3 equipment and goods, destroying much of this property and withholding the
4 remainder for weeks at a time – in some cases, without ever returning it. In
5 addition, the decision of the Defendant City to allow 4Leaf, Craig Tole, Pete Roque
6 and other 4Leaf personnel to operate independently with little or no City
7 supervision has permitted 4Leaf and its personnel to utilize the City’s
8 impoundment provisions, under color of law, to harass vendors, refuse to identify
9 themselves, threaten vendors that they have no right to vend in the City and must
10 leave, and fail to inform vendors of their rights.

11 87. Pursuant to 42 U.S.C. § 1983, Plaintiff is entitled to the following
12 relief:

13 a. In light of the actual controversy between the parties
14 concerning the challenged impoundment provisions and the seizures implemented
15 pursuant to them, a declaratory judgment that these provisions – and the seizures of
16 sidewalk vendors’ property they purport to authorize – are unlawful and in
17 violation of the Fourth, Fifth and Fourteenth Amendments;

18 b. Injunctive relief barring all Defendants from invoking the
19 City’s challenged impoundment provisions in violation of the Fourth, Fifth and
20 Fourteenth Amendments and/or utilizing any such provisions to seize, destroy or
21 withhold the equipment, goods or any other property of Fontana sidewalk vendors
22 at any time and under any circumstances. Such relief may initially take the form of
23 an initial or preliminary injunction, followed by a permanent injunction.
24
25
26
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28

**THIRD CAUSE OF ACTION
SB-946 and SB-972
Preemption by State Law
(Against All Defendants)**

1
2
3
4 88. Plaintiff realleges and incorporates by reference each and every
5 allegation contained in the above paragraphs.

6 89. The challenged provisions of the City’s Ordinances 1789 and 1925
7 conflict with, and therefore are preempted by, the California Legislature’s
8 enactment of SB-946 and SB-972. As the California Supreme Court has repeatedly
9 held, when a city government’s “local legislation conflicts with state law, it is
10 preempted by such law and is void.” *Sherwin-Williams Co.*, 4 Cal. 4th at 897; *see*
11 *Water Quality Ass’n*, 44 Cal. App. 4th at 741. Here, the City’s Ordinances are
12 preempted on two separate grounds:

13 a. First, each of the City’s challenged provisions “enter[s] an area . . .
14 expressly or impliedly fully occupied by” State law. *Am. Fin. Servs.*, 34 Cal.4th
15 at 1251, 1253; *see supra*, pp. 46-48. As discussed above, SB-946 and SB-972
16 have each adopted “a general scheme for the regulation” of an important subject
17 requiring statewide treatment and have thereby exercised “entire control over . . .
18 the subject[s] . . . covered by state legislation.” *Am. Fin. Servs.*, 34 Cal. 4th at
19 1253; *see Lane*, 58 Cal. 2d at 105 (“where the state has fully occupied the field,
20 there is no room for additional requirements by local legislation”).

21 b. Second, local legislation is preempted when it is “contradictory
22 or inimical [to State law].” *Am. Fin. Servs.*, 34 Cal. 4th at 1251; *see Chevron*
23 *U.S.A.*, 15 Cal. 5th at 139-40, 145. At pages 48-50 above, each of the City’s
24 challenged provisions are shown to be contradicted by SB-946, SB-972 or both,
25 and thereby are preempted on this ground as well.

26 90. Importantly, this cause of action includes an additional violation by
27 the City, namely its three unlawful permit requirements needed before sidewalk
28

1 vendors can obtain a local vending permit. *Supra*, pp. 20-23. While not addressed
2 by federal constitutional provisions, the City has gone far beyond other local
3 permit requirements imposed on its small businesses, and violates SB-946’s
4 “objective health, safety, or welfare” standard. In particular, this SB-946
5 requirement bars local governments from imposing permit requirements unless the
6 local government can establish “objective” facts that this restriction is necessary to
7 address a “health, safety, or welfare concern” of significant importance to the
8 public. *Supra*, pp. 18, 22-23. Here, none of the three challenged permit provision
9 are even remotely necessary to satisfy any “objective health, safety, or welfare”
10 concerns cognizable under SB-946. As such, the City’s permit requirements
11 violate SB-946 and so are covered by this cause of action.

12 91. Pursuant to SB-946 and SB-972, Plaintiffs are entitled to the
13 following relief:

14 a. In light of the actual controversy between the parties
15 concerning the conflict between SB-946 and SB-972 and the challenged provisions
16 of the City’s Ordinances, a declaratory judgment that the City’s provisions are
17 preempted by the State enactments; and

18 b. Injunctive relief barring all Defendants from utilizing any of the
19 City’s challenged provisions and prohibiting the City from imposing any further
20 sanctions or penalties not expressly authorized by SB-946 and/or SB-972.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays as follows:

23 1. For a preliminary injunction and a permanent injunction that enjoins
24 and requires Defendants from enforcing, implementing or utilizing the provisions
25 of Fontana’s Or. 1789 and Or. 1925 that are challenged herein under the First,
26 Fourth, Fifth and Fourteenth Amendments to the United States Constitution and/or
27 that are in conflict with the provisions of California’s SB-946 and SB-972;

28 2. For a declaratory judgment resolving the controversy between the

Parties by determining that the provisions of Fontana’s Or. 1789 and Or. 1925 are unlawful and in violation of the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and/or are in conflict of the provisions of California’s SB-946 and SB-972;

3. For costs of the suit and attorneys’ fees as provided by law;

4. For such other relief as the Court deems just and proper.

Date: October 9, 2025

Respectfully submitted,

ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ Matthew T. Heartney

Matthew T. Heartney (SBN 123516)
Daniel Shimell (SBN 300931)
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PUBLIC COUNSEL

By: /s/ Ritu Mahajan

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Attorneys for Plaintiff

EXHIBIT 1

MINUTES

Area 2 Community Meeting

July 27, 2023 6:30 PM | Heritage Intermediate School Area Commander Lt. Matt Kraut

In Attendance

Lt. Matt Kraut, Landscape Technician Raul Esparza, Traffic Engineering Dave Teater, Engineering Shawn Matejcek, Community Policing Technician Amber Smith, Code Compliance Inspector Cynthia Gil, Code Compliance Supervisor Jason Barber, Community Services Celeste Sanchez, Traffic Engineering Ruben Hovanesian, Officer Diaz, Councilmember Cothran, Mayor Warren and Chief Michael Dorsey

Lt. Matt Kraut

- Welcomed everyone to the Area 2 Community Meeting.
- Had all of city staff introduce themselves.
- He has been in Law Enforcement for 24 years and spent 6 years in Arcadia before coming to the Fontana Police Department.
- He has been assigned to many units and assignments within the police department.
- The city is broken up into four areas. This area is Area 2 which encompasses everything from the 210 freeway to Foothill Blvd east and west of the city. There is also a little pocket just south of Foothill that belongs to Area 2.
- The Area Commander program was created for the ongoing, quality of life problems. When you have an emergency, please call dispatch to have an officer get out there immediately, however if it is an on-going problem then you contact Lt. Kraut.
- We try to do our best to solve the problems with the resources we have.
- There is lots of information you can find on the city's website. www.fontanaca.gov.
- He doesn't work everyday, so email might be the best way to contact him. If you need to contact the Area Commander his email is mkraut@fontanaca.gov.

Chief Michael Dorsey

- Advised he is the new Police Chief.
- He has been in law enforcement for over 27 years and recently was promoted to Police Chief approximately 3 months ago.
- He has been assigned to several units within the department and it has been a while since he has been to one of the community meetings so he wanted to come out and see what the community's concerns are.

Questions

- **Has the number of officers per citizen increased?** The problem we are currently having is filling vacancies. We currently have 20 officer positions open. It is a lengthy hiring process, so even though we have more officer numbers on the books we are still trying to hire the right people for the job.
- **How many patrol units do we have in the area?** It depends on the night and the teams that are working. We have a minimum of 3 to 4 patrol officers in the area, however, we also have special assignment officers

who might be working in the area. If for any reason we need more officers for a particular call, officers from Area 1 and 3 will come into Area 2 to assist.

- **What are the boundaries for Area 2?** 210 freeway to Foothill from end to end and there is also a small pocket south of Foothill that is considered Area 2.
- **There is a problem with homeless just north of the Wells Fargo just north of the park. Another resident advised they live at Citrus and Walnut and there are homeless there as well.** Lt. Kraut advised we are doing our best to get the resources out to those who want them. The problem is the laws have changed in California which changed the way our officers handle those types of calls. Chief Dorsey advised it is really tough to deal with the homeless problem however they city is doing a lot to help. Mayor Warren advised we are doing what we can to obtain funding. We are one step closer to getting a shelter. We have committed over 15 officers to deal with the homeless. Sacramento allowed to say they have rights too, they fought for them so we are unable to take their stuff. They are starting to hide in the riverbeds, some are coming from LA and they are getting more violent. The state just passed Laura's law so we are working on getting mental health resources and funding. Water of Life has been a huge help with City Link and the homeless population. We currently have 14 houses we just opened up to help as residential shelters. We are working hard because we have too many families living out of their car. Chief Dorsey advised when he looked at our calls for service we have over 800 calls for service to deal with homelessness. It has impacted our PD. We are currently looking into doubling our MET unit, which is the unit who take the majority of the Homeless calls.
- **What is the MET team comprised of?** The MET team is made up of officers, social workers, probation officers, paramedics and behavioral health workers. The officers also work with SWAG who help with general stuff like obtaining a copy of their birth certificate so they can get identification.
- **Advised she works for a FUSD middle school and they have had students rushed to the hospital for ingesting things like fentanyl. It is becoming a big issue.**
- **Illegal fireworks are no longer just an issue around the 4th of July it is becoming a year around thing.** Fireworks are difficult to enforce. Our officers can't take enforcement action unless they see the person actually light the firework. Chief Dorsey advised on July 4th we deployed 71 officers, all from our special teams to work. We had hundreds of fireworks calls and we wrote 22 citation and along with that we also had several fire calls which were caused by fireworks.
- **How much as 311 reporting helped?** There is a learning curve but it has helped us to chart and target hot areas.
- **There is problem with the traffic signals over the 210 at Citrus. The lights don't sync up.** Traffic Engineer Dave Teater advised there are two issues with that location. First the on-ramp signals are too close to one another, and second Cal Trans maintains the signals going on to the freeway and they refuse to coordinate with us so we have to try our best to coordinate with them. We have a plan to add one lane to the northbound lanes which will serve as a right turn only lane to get onto the freeway eastbound however that plan is still several years out from getting started. Dave Teater also advised he will review the time restriction.
- **There has been an increase of semi trucks around Citrus and 210 going towards Baseline.** The increase truck traffic is due to construction, the city will be adding more truck restriction signs.
- **People are doing donuts in her area which is near Almeria Middle School.** Officer Diaz advised the traffic unit has been working hard doing street racing details throughout the city. We encourage you to call our dispatch when you see any takeovers.
- **Does the PD get a lot of calls for donuts within the Heritage Area?** Officer Diaz advised it has slowed down considerably.
- **What is the legality of adding cameras to your property that point out to the street.** It is legal as long as you are not getting your neighbors property.

- **Tried to report illegal dumping on a street however the new 311 system required her to put an actual address to the violation, the old system use to allow residents to put a dot on the map and it could have been on the street but this new system requires an actual address, which isn't always accurate.** The 311 system is fairly new. We will share your thoughts with our IT Department so they can make adjustments to the system.
- **When the city removes trees for one reason or another are they going to replace them?** In some cases trees will be replaced, in some cases they won't it just depends on the situation. If you have specific concerns, you can contact Public Works to find out if a certain tree will be replaced.
- **At Baseline and Las Palmas landscaping was taken out.** Raul Esparza with Public Works advised that landscaping will be replaced. Mayor Warren advised we are going to have some problems with the Landscape maintenance because most of the LMDs are underwater. We are currently looking at options because water rates increased, and service fees have increased however the fees to the residents haven't.
- **Do we have a leash law?** Yes we do have one. We will have to get the answer for specifics from Animal Services.
- **When the guys are cutting the lawn throughout Heritage they don't get off the lawn mower and they run over the sprinklers, they should change their process and have the edger go first so they can make sure the sprinklers are down before they mow over them.** Raul with Public Works advised if they are running the sprinklers over and breaking them they should be replacing them.
- **Are there any plans for a dog park in Heritage?** Councilmember Cothran advised there is a dog park in Heritage currently on the northside.
- **Street vendors are blowing up on the weekends.** Most of the street vendors are unpermitted, Cynthia Gil with Code Compliance advised we do street vendor details 3 times a week. We are throwing away their items, but they keep coming back. Jason with Code Compliance advised he has been here for 2 weeks, and we have been confiscating all their food but we have repeat offenders, the county is having the same issue. We try to educate them and push them along but they keep coming back. We are aware of the issue.
- **What is going in at Baseline and Cherry the green wall?** Councilmember Cothran advised the green wall is for our gas lines they gas company is reinforcing our gas lines in that area.
- **Are we building anything in the empty field?** Councilmember Cothran advised that area is zoned for mixed use, there will be a 1,000,000 sq ft industrial building along with residential housing.

Next Meeting

November 16th @ 6:30 PM at North Tamarind Elementary School (7961 Tamarind Avenue)

EXHIBIT 2

**CITY OF FONTANA
PROFESSIONAL SERVICES AGREEMENT
BS-24-05-SP-1**

This Agreement is made and entered into as of **November 14, 2023** by and between the City of Fontana, a public agency organized and operating under the laws of the State of California with its principal place of business at 8353 Sierra Avenue, Fontana, California 92335 ("City"), and **4LEAF Inc.**, a corporation with its principal place of business at 2126 Rheem Driver, Pleasanton California 94588 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

Code Compliance Inspection Services (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement **not to exceed the sum of \$644,496**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or

the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Term of Performance

The term of this Agreement shall be from **November 14, 2023 to May 14, 2024**, unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Contractors Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must

specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any

insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775),

employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Reserved.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

17 Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of

services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

18 Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

19. Organization

Consultant shall assign Craig Tole as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:
City of Fontana
8353 Sierra Avenue
Fontana, California 92335
Jeffrey Baughman
jbaughman@fontanaca.gov

CONSULTANT:
4Leaf Inc.
2126 Rheem Drive
Pleasanton, California 94588
Craig Tole, Vice President
ctole@4leafinc.com

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

**CITY OF FONTANA
SIGNATURE PAGE
BS-24-05-SP-1**

CITY OF FONTANA

4 LEAF, INC

By: Matthew C. Ballantyne
Matthew C. Ballantyne
City Manager

By: Kevin Duggan
Kevin Duggan
President, 4LEAF Inc.

Attest:

By: Germaine Key
Germaine Key
City Clerk's Office

By: Phillip Burum
Phillip Burum
Deputy City Manager

Approved as to form:

Ruben Duran
Best Best & Krieger LLP
City Attorney

By: Jeffrey Baughman
Jeffrey Baughman
Building and Safety Official

IN COMPLIANCE WITH CONTRACT INSURANCE REQUIREMENTS

SM By: Rakesha L. Voss
Rakesha Voss
Human Resources & Risk Management Director

IN COMPLIANCE WITH PURCHASING AND CONTRACT ADMINISTRATION POLICIES/PROCEDURES

Jessica Brown
Jessica Brown
Chief Financial Officer

Sid Lambert
Sid Lambert
Purchasing Office

EXHIBIT A

Scope of Services

4Leaf is being hired to address our ongoing issues regarding non-permitted sidewalk vendors. 4Leaf has agreed to provide contracted Code Enforcement Officers (CCEO) at least six days/evenings a week, no more than 8 hours per shift. CCEO is expected to address all non-permitted sidewalk vendors, by providing education and explaining how to obtain the proper permits to conduct business in the City of Fontana. For individuals that chose to continue to operate without the property permits, CCEO will confiscate all perishable/non-perishable items and properly provide notices to the vendors on how to obtain all non-perishable items from the City. All non-perishable items will be photographed and logged by the CCEO. 4 Leaf will be provided locations of non-permitted sidewalk vendors, and will be expected to address any areas throughout the City of Fontana.

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.



4LEAF, INC.

CONSTRUCTION MANAGEMENT · PLAN CHECK
INSPECTION · PLANNING · CODE ENFORCEMENT

Task Order: Code Enforcement Services

DATE: 10/18/23
4LEAF JOB NO.: TBD
4LEAF PRINCIPAL: Craig Tole
PROJECT(S): Code Enforcement Services
LOCATION: City of Fontana
TASK ORDER # 1

CITY OF FONTANA - CODE ENFORCEMENT	PERSONNEL	ESTIMATED HOURS	UNIT PRICE	ESTIMATED TOTAL
Vendor Enforcement with Vehicle (Operator)	TBD	3744	\$89.25	\$334,152
Vendor Enforcement with Vehicle (Non-Operator)	TBD	3744	\$77.25	\$289,224
Off-Site Project Management	Pete Roque	120	\$176	\$21,120
Preliminary Sub-Total of Services provided by 4LEAF				\$644,496
Preliminary Estimated Fees				\$644,496
Reimbursables N/A				\$0
Total Preliminary Estimated Fees				\$644,496

Estimate is to provide Code Enforcement Services to the City of Fontana. Term of the assignment is six(6) months. Assignments to be covered six(6) days per week.

4LEAF will utilize six (6) Code Enforcement Officers. Schedules to be determined by AHJ. All shifts will be eight(8) hours in length.

4LEAF will perform services on a time and materials basis utilizing four hour minimums in four hour increments. Additional hours requested will require a change order.

4LEAF will provide three(3) vehicles for the Code Enforcement Officer working in teams of two to utilize while working for the City of Fontana. 4LEAF will acquire trucks by 12/1/23.4LEAF will also budget 4 hours per week for Project Management of Client and assignments. Any overtime must be requested by Client via email or text.



City of Fontana
Action Report
City Council Meeting

8353 Sierra Avenue
Fontana, CA 92335

File #: 21-2513
Agenda #: A.

Agenda Date: 10/10/2023
Category: Unfinished Business

FROM:
Code Compliance

SUBJECT:
Award of contract for additional contracted Code Compliance Inspectors to address Non-permitted Street Vendors.

RECOMMENDATION:

1. Award proposal and authorize the City Manager to execute a contract with 4Leaf Inc. in the amount of \$598,224 for the period of six (6) months.
2. Authorize the City Manager to execute any and all contract amendments on behalf of the City of Fontana for Non-permitted Street Vendor Inspections.

COUNCIL GOALS:

- Improve public safety by increasing operational efficiency, visibility, and availability.
- Operate in a businesslike manner by correcting problems immediately.

DISCUSSION:

The City of Fontana continues to receive complaints from residents and business owners regarding non-permitted street vendors operating throughout the City. To maintain the City's commitment to ensure the City's safety and support local businesses, additional staffing is needed to perform more inspections on a weekly basis.

On September 12, 2023, at the City Council workshop, City Council directed staff to bring a proposal that addresses the need for a more comprehensive approach to enforcement, covering at least five (5) evenings per week. 4 Leaf Inc has worked successfully with the City of Orange and the City of Tustin on their programs to increase education amongst street vendors as well as to strictly enforce City Code requirements.

Approval of this proposal will result in citywide coverage six (6) evenings per week, with a total of six (6) Code Officers working eight (8) hours per shift. By being more consistent and having more contracted Code Compliance Officers, we expect to see a significant reduction in the amount of non-permitted and unlicensed street vendors. Approval of this contract will negate the need for Public Works and FPD overtime support. The teams of three provided by 4Leaf will operate independently, contacting FPD for support only when necessary. 4-Leaf has a current contract for services with the City of Fontana, which was approved by the City Council on September 12, 2023.

FISCAL IMPACT:

The Fiscal Impact associated with the approval of this item is \$598,224 and is not included in the 2023-24 current budget and will be funded by available unappropriated General Fund balance.

File #: 21-2513
Agenda #: A.

Agenda Date: 10/10/2023
Category: Unfinished Business

Appropriate paperwork will be submitted with the First Quarter Budget Report.

MOTION:

Approve staff recommendation.

City of Fontana

8353 Sierra Avenue
Fontana, CA 92335



Minutes

Tuesday, October 10, 2023

7:00 PM

Grover W. Taylor Council Chambers

City Council Meeting

Acquanetta Warren - Mayor
Peter A. Garcia - Mayor Pro Tem
John B. Roberts - Council Member
Jesus "Jesse" Sandoval - Council Member
Phillip Cothran - Council Member
Germaine Key - City Clerk
Janet Koehler-Brooks, City Treasurer

WORKSHOP:

A. 5:30 P.M. City Council Workshop

The Workshop of the Fontana City Council was held on Tuesday, October 10, 2023, in the Grover W. Taylor Council Chambers, 8353 Sierra Avenue, Fontana, CA 92335. Mayor Warren called the meeting to order at 5:30 p.m. with all members of the City Council present except for Mayor Pro Tem Garcia who arrived at 5:34 p.m.

City Clerk Germaine Key and City Treasurer Janet Koehler-Brooks were also in attendance.

City Attorney Ruben Duran presented the staff report on Spanish Translation Services and discussed translation services as it related to State law, the Brown Act and the Dymally-Alatorre Bilingual Services Act. Stated that Government Code Section 7293; 7295 gives local agencies discretion on enforcing the act and provided an overview on what translation services the City currently provides.

Council Member Cothran asked if notices affecting property were provided in Spanish.

A recommendation was made to translate in Spanish any notices for General Plan amendments, zoning amendments and any other items significantly affecting one's property.

Deputy City Manager Phillip Burum stated that all public notices have a disclaimer in Spanish to contact the City for any questions or assistance.

Mayor Warren asked if public notices were also published in a Spanish newspaper.

Council Member Cothran suggested data tracking to determine what frequently used forms should be translated in Spanish.

Mayor Warren recommended translating in other languages based on community demographics.

Council Member Sandoval discussed concerns with time sensitive notices and many Spanish speaking residents waiting on family members to translate them.

City Manager Matthew Ballantyne stated that staff would research the analytics on frequently used forms and report back to the Council.

PUBLIC COMMUNICATION - CLOSED SESSION:

There were no public communications received for the following items:

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1) Case: Anderson/Moore Sr. et al. v. City of Fontana Claim Number(s): CIVDS 1610471
2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1) Case: Robert King v. City of Fontana Claim

Number(s): CIVDS 2016703

3. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1) Case: John B. Stark v. City of Fontana Claim Number(s): CIVSB2124569

CLOSED SESSION:

A. 6:00 P.M. CLOSED SESSION

The Closed Session meeting of the Fontana City Council was held in the Executive Conference Room, 8353 Sierra Avenue, Fontana, CA 92335, on Tuesday, October 10, 2023.

Mayor Warren called the meeting to order at 6:00 p.m., with all members of the City Council present.

CALL TO ORDER/ROLL CALL:

A. 7:00 P.M. Call To Order/Roll Call:

A Regular Meeting of the Fontana City Council was held in the Grover W. Taylor Council Chambers, 8353 Sierra Avenue, Fontana, CA 92335, on Tuesday, October 10, 2023. Mayor Warren called the meeting to order at 7:04 p.m.

ROLL CALL:

PRESENT: Mayor Warren, Mayor Pro Tem Garcia, Council Members Roberts, Sandoval and Cothran.

ABSENT: None

City Clerk Key and City Treasurer Koehler-Brooks were also in attendance.

INVOCATION/PLEDGE OF ALLEGIANCE:

A. Invocation/Pledge of Allegiance:

The invocation was given by Council Member Roberts, followed by the pledge of allegiance led by Mayor Pro Tem Garcia.

PROCLAMATIONS:

A. Proclamations

Mayor Warren and City Council proclaimed October 7-15, 2023, as Water Professionals Appreciation Week. West Valley Water District Director Garcia accepted.

Mayor Warren and City Council proclaimed the Month of October 2023 as National Community

Planning Month. Planning Commission Chair Cathline Fort and Director of Planning Patty Nevins accepted.

Mayor Warren and City Council proclaimed the 2nd Week of October 2023 as Code Compliance Officer Appreciation Week. Community Improvement Program Manager Sandra Pelayo accepted.

Mayor Warren and City Council proclaimed the month of October 2023 as Cyber Security Awareness Month. Information Technology Manager Chris Beck accepted.

Mayor Warren and City Council proclaimed October as National Manufacturing Month. Cynthia Amador Díaz of California Manufacturing Technology Consulting accepted.

SPECIAL PRESENTATIONS:

Mayor Warren and City Council recognized the 2023 Planning Department Employee of the Year Maria Torres.

Mayor Warren and City Council recognized Code Compliance Officer of the Year Peggy Fonseca.

Mayor Warren and City Council recognized Department of Innovation and Technology's Employee of the Year Steven Pendleton.

PUBLIC COMMUNICATIONS:

A. Public Communications

Diane Smyers spoke about services offered by San Bernardino County CASA and asked the Mayor and Council to help foster youth living in Fontana.

Sergeant First Class (SFC) Espinoza, a recruiter with the US Army, introduced himself to the Council, staff and community. SFC Espinoza also introduced one of their recruits, Manual Enrique Medina-Rivera and asked the Council for letters of recommendation for Mr. Medina-Rivera.

Julionna Redondo discussed concerns with the lack of traffic signals and crossing guards around local high schools.

Lynda Dykes asked for information on how the Safe Routes to School funding would be spent. Also discussed concerns with historical buildings being demolished and with the construction and zoning of warehouses.

Oskar Zambrano discussed concerns with the lack of Spanish translation services and asked the City to hire certified language interpreters to help serve Spanish-speaking residents.

Paul Basay asked if the City provided financial assistance with septic to sewer conversions for

Accessory Dwelling Units (ADU's).

CONSENT CALENDAR:

Council Member Sandoval requested that consent calendar item "I" be pulled and have a separate motion following the discussion.

Prior to the motion being made, Council Member Cothran recused himself from items "C," "D," and "J" on the Consent Calendar due to real estate holdings within the project areas.

ACTION: Motion was made by Council Member Sandoval, seconded by Mayor Pro Tem Garcia, and passed unanimously by a vote of 5-0 to approve the Consent Calendar items "A-H," and "J" with Council Member Cothran abstaining from items "C," "D," and "J." The motion carried by the following vote: **AYES:** Warren, Garcia, Cothran, Roberts and Sandoval; **NOES:** None; **ABSTAIN:** None **ABSENT:** None

Approve Consent Calendar Items as recommended by staff.

- | | | |
|-----------|--|----------------|
| A. | Approval of Minutes | 21-2528 |
| B. | Authorize the purchase of a CNG Freightliner SD114 10-Wheel | 21-2435 |
| C. | Award a Design-Build Contract for the City Hall Renovation Project - Phase I (Fire Annex) | 21-2437 |
| D. | Award a Construction Contract for the North Heritage Phase 1 Fiber Optic Project (Bid No. SB-147-DE-23). | 21-2468 |
| E. | California Department of General Service (DGS) MOU Agreement- Small Business Certification Program. | 21-2483 |
| F. | Approve a Professional Services Agreement for Construction and Project Management Services for the Courtplace Housing Development Project (Infrastructure Improvements) | 21-2493 |
| G. | 2024 Selective Traffic Enforcement Program Grant Award | 21-2497 |
| H. | Donation of Surplus Vehicle Ford E-450 Bus Unit # 3115 | 21-2498 |
| I. | Award a Contract for the Cypress Center Roof Project. | 21-2504 |
| J. | Award a Construction Contract for the San Sevaine Trail Phase 1, Segment 2 Project | 21-2514 |

Public Works Support Services Manager Armando Martinez presented the staff report for item "I."

Council Member Sandoval discussed concerns with the price differences between bids and potential change orders.

Public Works Support Services Manager Armando Martinez stated that scope of work was very detailed and lead and asbestos tests were negative. Also noted the contract included a 10% contingency and the proposed vendor was highly recommended with very few change orders done on prior construction projects they had worked on.

PUBLIC HEARINGS:

- A. Adoption of **Ordinance No. 1925**, of the City Council of the City of Fontana, California adopting an impoundment policy supplementing the sidewalk vending ordinance to help protect the City's community by more effectively regulating sale of food, goods, and merchandise creating a health and safety danger. **21-2515**

Deputy City Manager Phillip Burum introduced the staff report.

Code Compliance Inspector Jason Barber provided the staff report and discussed the proposed ordinance.

The City Clerk's Department received one (1) written correspondence in opposition of this item.

Mayor Warren opened the public hearing.

Mayor Warren closed the public hearing.

Mayor Warren re-opened the public hearing.

The following individuals spoke in opposition of the item:

1. Oscar Zambrano.

The following individuals spoke in favor of the item:

1. Amanda Morales, Fontana Chamber of Commerce

Mayor Warren closed the public hearing.

ACTION: Motion was made by Council Member Roberts, seconded by Mayor Pro Tem Garcia, and passed unanimously by a vote of 5-0 to approve Public Hearing Item "A" as follows:

Waive further reading of and introduce **Ordinance No. 1925** an Ordinance of the City of Fontana adding Fontana Municipal Code sections 1-14 (Enforcement Obstruction Consequences) and 15-829 (Impoundment) relating to Sidewalk Vending; and that the reading of the title constitutes the first reading thereof.

The motion carried by the following vote: **AYES: Warren, Garcia, Cothran, Roberts and Sandoval; NOES: None; ABSTAIN: None ABSENT: None**

CONTINUED BUSINESS:

A. Continued Business

- A. Award of contract for additional contracted Code Compliance Inspectors to address Non-permitted Street Vendors. 21-2513**

Deputy City Manager Phillip Burum, stated that the contractor was asked to provide a proposal for use of their own vehicles instead of City vehicles due to risk management issues with contractors using City vehicles.

Code Compliance Inspector Jason Barber provided the staff report.

Mayor Warren discussed the importance of supporting local businesses who comply with all local regulations and requirements.

Discussion ensued regarding City employees or Police Department volunteers driving contractors in City vehicles.

Mayor Pro Tem Garcia expressed support for enforcement of non-permitted street vendors and protecting local and small family businesses who operate legally.

Council Member Cothran asked if any street vendors took advantage of the City's small business assistance program.

Deputy City Manager Phillip Burum explained the protocol and stated there was not much interest from street vendors.

City Manager Matthew Ballantyne requested that the Council consider amending the motion to include a 10% contingency for use of the contractor's vehicles.

ACTION: Motion was made by Mayor Pro Tem Garcia, seconded by Council Member Roberts, and passed unanimously by a vote of 5-0 to adopt Continue Business Item "A" as follows:

1. Award proposal and authorize the City Manager to execute a contract with 4Leaf Inc. in the amount of \$598,224 for the period of six (6) months;

2. Authorize the City Manager to execute any and all contract amendments on behalf of the City of Fontana for Non-permitted Street Vendor Inspections;
3. Authorize a 10% contingency for use of the contractor's vehicles.

The motion carried by the following vote: AYES: Warren, Garcia, Cothran and Roberts and Sandoval; NOES: None; ABSTAIN: None; ABSENT: None

CITY MANAGER COMMUNICATIONS:

A. City Manager Communications

City Manager Matthew Ballantyne did not have any comments.

ELECTED OFFICIALS COMMUNICATIONS/REPORTS:

A. Elected Officials Communications/Reports

City Clerk Key had no comments.

City Treasurer Koehler-Brooks had no comments.

Mayor Pro Tem Garcia congratulated all who were recognized this evening and expressed support for small businesses and looked forward to continuing to work on the downtown revitalization.

Council Member Cothran congratulated all staff who were recognized this evening.

Council Member Sandoval thanked Sergeant First Class Espinoza for his service, encouraged local students to participate in the Veteran's Day Essay Contest, thanked staff for recognizing Breast Cancer Awareness Month, asked about pink name placards for the dais and encouraged all to be screened for cancer.

Council Member Roberts discussed concerns with illegal street vendors and the importance of protecting and supporting local businesses.

Mayor Warren congratulated all staff that were recognized tonight, encouraged all to attend the Fontana Let's Move event on October 14th, discussed the Mayor's Youth Coalition, the Future Shapers Academy and Breast Cancer Awareness Month. She also encouraged all to pray for Israel and thanked Assembly Member Reyes for the \$3 million donation towards the downtown revitalization arts district.

ADJOURNMENT:

A. Adjournment

Mayor Warren adjourned the meeting in memory of the victims of Hamas' terrorist attacks in Israel. The meeting adjourned at 8:38 p.m. to the next Regular City Council Meeting on October 24, 2023, at 7:00 p.m. in the Grover W. Taylor Council Chambers located at 8353 Sierra Avenue, Fontana, California.

Christina Rudsell
Deputy City Clerk

THE FOREGOING MINUTES WERE ADOPTED AND APPROVED BY THE FONTANA CITY COUNCIL ON OCTOBER 24TH, 2023.

Germaine Key
City Clerk



Certificate Of Completion

Envelope Id: D1FCE972595F4E228F18BF7DDA8673DA
Subject: 4 Leaf / Code Compliance Inspection Services BS-24-05-SP-1
Source Envelope:
Document Pages: 22 Signatures: 9
Supplemental Document Pages: 11 Initials: 1
Certificate Pages: 7
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

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Envelope Originator:
Purchasing Office

8353 Sierra Avenue
Fontana, CA 92335
purchasing@fontana.org
IP Address: 192.146.186.96

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Status: Original
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purchasing@fontana.org

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Signer Events

Kevin Duggan
kduggan@4leafinc.com
President
Security Level: Email, Account Authentication
(None)

Signature

Signature Adoption: Pre-selected Style
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Signed using mobile

Timestamp

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Signed: 11/2/2023 | 04:06 PM

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Jeffrey Baughman
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Building & Safety
Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style
Using IP Address: 192.146.186.96

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Phillip Burum
pburum@fontana.org
Deputy City Manager
Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style
Using IP Address: 192.146.186.96

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Ruben Duran
ruben.duran@bbklaw.com
Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style
Using IP Address: 74.116.243.2

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Signed: 11/2/2023 | 09:22 PM

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Signer Events

Susan Mendoza
smendoza@fontanaca.gov
Security Level: Email, Account Authentication
(None)

Signature

SM

Signature Adoption: Pre-selected Style
Using IP Address: 192.146.186.96

Timestamp

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Signed: 11/7/2023 | 08:21 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign
Supplemental Documents:

Action Report.pdf

Viewed: 11/7/2023 | 08:21 AM
Read: Not Required
Accepted: Not Required

Rakesha L. Voss
rvoss@fontanaca.gov
Human Resources
Security Level: Email, Account Authentication
(None)

Rakesha L. Voss

Signature Adoption: Pre-selected Style
Using IP Address: 192.146.186.96

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Signed: 11/7/2023 | 12:18 PM

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ID: 4b952ffd-c249-4232-89a0-7b4a2e9e36bd

Sid Lambert
slambert@fontana.org
Purchasing Office
Paragon Partners Consultants, Inc.
Security Level: Email, Account Authentication
(None)

Sid Lambert

Signature Adoption: Pre-selected Style
Using IP Address: 192.146.186.96

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Signed: 11/7/2023 | 04:31 PM

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Jessica Brown
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Chief Financial Officer
Security Level: Email, Account Authentication
(None)

Jessica Brown

Signature Adoption: Pre-selected Style
Using IP Address: 174.195.131.215
Signed using mobile

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Matthew C. Ballantyne
mballantyne@fontanaca.gov
City Manager
Security Level: Email, Account Authentication
(None)

Matthew C. Ballantyne

Signature Adoption: Pre-selected Style
Using IP Address: 192.146.186.96

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Supplemental Documents:

City Council Meeting minutes 10.10.23.pdf

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Action Report.pdf

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Read: Not Required
Accepted: Not Required

Signer Events

Germaine Key
gkey@fontanaca.gov
Security Level: Email, Account Authentication
(None)

Signature



Signature Adoption: Pre-selected Style
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Agent Delivery Events

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Status

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Breana Estrada
bestrada@fontanaca.gov
Security Level: Email, Account Authentication
(None)
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Jason Barber
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Kathy Kasinger
kkasinger@fontana.org
Records Coordinator
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Steve
smcguffey@fontana.org
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Status

Timestamps

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Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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