

SIDEWALK VENDING ORDINANCE

WHEREAS, Senate Bill No. 946 (“SB 946”), effective January 1, 2019, provides that cities may not regulate sidewalk vending except in accordance with its provisions which are codified in Government Code sections 51036 through 51039; and

WHEREAS, the City seeks to adopt an enforceable sidewalk vending program that responds to the objective needs and circumstances of the City, and protects the public health, safety and welfare; and

WHEREAS, considering the specific provisions for sidewalk vending in state law, regulating sidewalk vending through a local permit license specific to the activity will enable the City to more effectively comply with state mandates; and

WHEREAS, regulating sidewalk vending will benefit the City by promoting entrepreneurship and a dynamic streetscape, while ensuring the protection of the public health, safety, and welfare; and

WHEREAS, unless properly regulated, vending in the public right-of-way and in public parks creates the potential for increased safety risks including, but not limited to interfering with the performance of police, firefighter and paramedic services; contributing to traffic congestion; and interfering with the ability of pedestrians and persons with disabilities to follow a safe path of travel by obstructing the right-of-way with vending equipment or by increasing congestion; and

WHEREAS, requiring sidewalk vendors engaged in the sale of food to comply with applicable sanitation requirements will protect the public health and safety against the accumulation of litter and food products or food by products being left on the City’s sidewalks and surrounding areas; and

WHEREAS, regulations related to the collection and disposal of trash or other debris generated by sidewalk vending are necessary to ensure that such trash or debris is not left, thrown, discarded, or deposited on City streets, sidewalks, pathways, gutters, or storm drains, or upon public or private lots, so that the same might be or become a pollutant; and

WHEREAS, requiring sidewalk vendors to undergo background checks may be necessary as determined by the Police Department to ensure vendors meet the requirements of a license to operate in or near parks, schools, residences, and other places frequented by children; and

WHEREAS, restrictions on sidewalk vending in public parks is necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities, and to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of these parks; and

WHEREAS, the City Council hereby finds that the regulation of sidewalk vendors set forth herein is directly related to protecting the health, safety and welfare of the Hercules community.

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

SECTION 1. The above recitals are true and correct.

SECTION 2. Environmental Review. The City Council exercises its independent judgment and finds that the proposed ordinance is not subject to the California Environmental Quality Act (CEQA), pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the subject regulations have no potential for resulting in any significant physical change to the environment, either directly or indirectly.

SECTION 3. Chapter 4 of Title 3 of the Hercules Municipal Code regulating mobile food vendors, Section 3-4.1012(a), is hereby amended to delete reference to "push-carts" from the definition of "mobile food vehicle" and shall read as follows:

(a) Definitions. As used in this section:

"Mobile food vehicle" means any lunch wagon, eating cart or food truck, or ice cream truck, ~~or push-cart~~ from which foodstuffs are sold on public streets, alleys, or highways within the City of Hercules.

"Mobile food vendor" means any person who conducts, permits or causes the operation of, or owns, operates, controls, manages, or leases, any mobile food vehicle.

"Ice cream truck" means any mobile food vehicle equipped or primarily used for retail sales of ice cream, ice milk, popsicles, frozen yogurt, frozen dessert products, and confections of any kind on public streets, alleys, or highways within the City of Hercules.

SECTION 4. Chapter 4 is hereby added to Title 6 of the Hercules Municipal Code to read as follows:

Title 6, Chapter 4 – SIDEWALK VENDING

Sections:

6-4.01 – Purpose.

The purpose of this Chapter is to establish a sidewalk vending program within the city while maintaining objective regulations that are directly related to public health, safety, and welfare.

6-4.02 – Definitions.

The following definitions apply to this Chapter:

“Business tax certificate” means a business license issued by the city to conduct business in the city.

“California Retail Food Code” means Part 7 of Division 104 of the California Health and Safety Code (commencing at Section 113700).

“Cart” means any pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, and includes a stationary cart or a roaming cart.

“Cart permit” means a permit issued by the city for a cart to vend food or merchandise within the city.

“Director” means the director of the Public Works Department.

“Food” means any type of edible substance or beverage.

“Goods” or “merchandise” means any item that is not food.

“Health Department” means the Contra Costa County Environmental Health Division.

“Person” or “persons” means one or more natural persons, individuals, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs or organizations composed of two or more individuals (or the manager, lessee, agent, servant, officer or employee of any of them), whether engaged in business, nonprofit or any other activity.

“Roaming sidewalk vendor” has the same meaning as set forth in Government Code section 51036(b), and includes a sidewalk vendor who moves from place to place and stops only to complete a transaction.

“Roaming vending cart” means a pushcart, pedal-driven cart, wagon, or other nonmotorized conveyance used by a roaming sidewalk vendor, to be moved from place to place, and with stops only to complete a transaction.

“Rules and regulations” means the rules and regulations, if any, established by the Director and adopted by city council resolution, concerning the sidewalk vending

program that are intended to clarify and aid in the administration and enforcement of this Chapter.

“Sidewalk” means any paved surface in the public right-of-way provided for the use of pedestrians and includes pedestrian paths.

“Sidewalk vending program” means the program established by this Chapter that is applicable to sidewalk vending-related activities.

“Sidewalk vendor” has the same meaning as set forth in Government Code section 51036(a), and includes a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

“State seller’s permit” means a permit issued by the California Department of Tax and Fee Administration.

“Stationary sidewalk vendor” has the same meaning as set forth in Government Code section 510361, and includes a sidewalk vendor who vends from a fixed location.

"Stationary vending cart" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, kiosk, or other nonmotorized conveyance, that is intended to be operated from a fixed location by a stationary sidewalk vendor“.

"Vend" means to sell, offer for sale, expose or display for sale, solicit offers to purchase, barter, or exchange anything of value, even if the transaction is characterized as a donation.

"Vending permit" means a form of Encroachment Permit issued by the city to vend food or merchandise within the city in accordance with this Chapter.

"Contra Costa County Environmental Health Division permit" means any and all licenses, permits, certifications, and courses required and issued by the Environmental Health Division of the County of Contra Costa to vend food within the city in accordance with this Chapter.

6-4.03 - Administration.

- A. The Public Works Department is authorized to issue sidewalk vending permits in accordance with this Chapter.
- B. The Director is authorized to develop, and enforce, the rules and regulations regarding the permitting and operation of sidewalk vending, in accordance with this Chapter.
- C. The Director, in coordination with the Chief of Police, shall at the time of permit issuance and permit renewal, provide information to permit applicants regarding criminal penalties for human trafficking.

6-4.04 - Vending permit required.

No sidewalk vendor may vend or operate anywhere within the city without first obtaining a sidewalk vending permit. Sidewalk vendors must comply with the terms and conditions set forth in the sidewalk vending permit. The Director shall promulgate additional administrative regulations consistent with this Chapter as needed for use of vending carts applicable to both stationary and roaming vending activities, including but not limited to permissible hours and days of operation.

6-4.05 - Application requirements.

- A. To obtain or to renew a sidewalk vending permit, a sidewalk vendor must provide the following as part of the application:
1. Valid identification, such as a State of California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number, or any other government-issued identification card.
 2. The name, address and telephone number of the sidewalk vendor, and if employees are hired by the applicant to vend from sidewalk vendor's stationary or roaming cart, the names, addresses, and telephone numbers of such employees. This information is required to be updated within five (5) business days when the sidewalk vendor's address or telephone number changes or when new employees are hired.
 3. Proposed hours and days of operation.
 4. Whether the sidewalk vendor intends to operate a stationary vending cart or a roaming vending cart.
 5. Proposed location of operation.
 - a. An application for placement of a stationary cart in a commercial or industrial area of the city must contain the proposed location, marked by major cross streets, and a photo or detailed sketch of such location.
 - b. An application for a roaming vending cart must include a map showing the areas in the City in which they plan to operate.
 6. The type of merchandise or food offered for sale or exchange.
 7. Proof of a valid City of Hercules business license.
 8. Proof of liability insurance and signed indemnification in favor of the city, in an amount not less than five hundred thousand dollars for property damage and injuries, including injury resulting in death, caused by the operation of the vending business.
 9. The application or renewal fee.

10. A valid California Department of Tax and Fee Administration seller's permit and additional licenses from state or local agencies to the extent required by law.
 11. A permit from the health department for food-related vending, if applicable.
 12. Proof of a completed background check, if required by the Police Department.
 13. A declaration that the information provided to the city is true and correct.
 14. Any other information as may be required by the Director including compliance with administrative regulations regarding vending carts.
- B. Vending permits will expire one year after the date of issuance.
- C. Vending permits are not transferable.
- D. A person whose vending permit is revoked may not renew their vending permit for one year.
- E. In accordance with Government Code section 51038(c)(4), identification numbers, such as social security numbers, will be confidential and will not be disclosed.

6-4.06 - Operational requirements.

- A. Every cart used to vend food must be approved by the health department. A cart may only vend the types of food that are listed and approved by the health department under the health department permit.
- B. A cart used for sidewalk vending must obtain, possess, and prominently display a valid cart permit and all other required permits that are issued by other public agencies such as a health department permit.
- C. A cart used for sidewalk vending must be placed and used at all times in compliance with the terms and conditions of the vending license and all other applicable laws and regulations, including the California Retail Food Code if food is sold.
- D. No cart that is used for sidewalk vending may exceed a length of one hundred-eight inches, a width of fifty-four inches, or a height, including roof or awning, of seventy-eight inches.
- E. A vending cart must operate according to its approved hours of operation. The Public Works Director may impose reasonable hours of operation for sidewalk vendors. For sidewalk vending in nonresidential areas, the Director may limit the hours of operation in a manner consistent with other businesses or uses on the same street(s) in those nonresidential areas.
- F. No vending cart or trash receptacle may be left on the sidewalk after the sidewalk vendor's stated closing time.
- G. A sidewalk vendor must maintain a clean and trash-free ten-foot radius from a stationary cart during hours of operation and must leave the area clean by the approved closing time.

- H. Sidewalk vendors that vend food items must provide a trash receptacle for customers and must ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash without resorting to existing trash receptacles located on any block for use by the general public. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation.
- I. Vendors must comply with all applicable federal, state, and local laws, regulations, and ordinances.
- J. No signs that are not attached to the vending cart may be used or displayed.
- K. Vending carts must be self-contained, including any power, cooking and heating equipment. Sidewalk vendors may not set up tables, chairs, tents or other structures, unless otherwise approved by the city. One chair and one umbrella per vendor may be provided for the purpose of allowing the vendors to be seated in shade. Sidewalk vendors may not access a city or private power source without authorization from the city or such private property owner or agent.
- L. No sidewalk vendor or vending cart may use any device that produces a loud noise, nor may the vendor use or operate any loudspeaker, public address system, radio, sound amplifier, or other similar device.
- M. Before non-electric generators or auxiliary power may be used to power a vending cart, the sidewalk vendor must obtain permission, as applicable, from the Contra Costa County Air Pollution Control District.
- N. Vending of services is prohibited.

6-4.07 - Vending near schools and in residential areas.

- A. Vending in residential areas. No stationary vending cart may be used to vend within a residential zoned area. However, a roaming sidewalk vendor may use a roaming vending cart within a residential zone as defined in Chapter 13-6 of the Hercules Municipal Code, and must move continuously except when necessary to complete a sale.
 - B. Vending near schools. No sidewalk vendor or vending cart may be used to vend within 300 feet of any school property before 4:00 p.m. during weekdays (Monday through Friday) except on days when school facilities are closed and schools are not in session.
- #### 6-4.08 - Prohibitions on placement of stationary or roaming carts.

- A. No sidewalk vendor may place or leave any vending cart:
 - 1. Within fifteen feet of a marked crosswalk.
 - 2. Within fifteen feet of the curb return of an unmarked crosswalk.
 - 3. Within fifteen feet of any fire hydrant.

4. Within fifteen feet ahead and forty-five feet to the rear of a sign designating a bus stop.
 5. Within a marked bus zone.
 6. Within ten feet of a bench or shelter used for public transit.
 7. Within fifteen feet of a driveway or driveway apron.
 8. Within twenty feet of an outdoor dining or patio dining area.
 9. Where placement impedes the flow of vehicular traffic such as on public streets or public highways.
- B. No vending cart may be chained or fastened to any utility pole, sign, tree, or other object in the public right-of-way or left unattended.
 - C. No vending cart may impede the flow of pedestrian traffic by reducing the path of travel to less than four feet, or impede access to or restrict the use of abutting property, including, but not limited to, residences and places of business, in accordance with the Americans with Disabilities Act (ADA).
 - D. Notwithstanding any specific regulations in this Chapter, no sidewalk vendor may install, use or maintain a vending cart where placement endangers the safety of persons or property.

6-4.09 - Sidewalk vending related to parks and special events.

- A. No sidewalk vending is allowed within three hundred feet of a city-permitted event within the time period commencing two hours before until one hour after the event except as expressly allowed by the event's permit. Permitted events include certified farmers markets, and any event that requires an encroachment permit or special event permit, or any other permit or authorization required by the city.
- B. The city may by resolution adopt additional requirements consistent with Government Code section 51038(b)(2)(B) for city-owned or operated parks, effective after signs are posted giving notice of such additional requirements.

6-4.10 - Fines.

Sidewalk vending in violation of this Chapter will not be punishable as a criminal infraction or misdemeanor, but will be subject to an administrative citation pursuant to Title 1, Chapter 4 of the Hercules Municipal Code.

Fines assessed pursuant this Section may be reduced to twenty percent of the original fine amount upon submission of proof of inability to pay at an adjudication hearing if requested by the person pursuant to Government Code section 51039(f).

6-4.11 - Removal of cart.

The city may request a sidewalk vendor remove any cart that is in violation of this Chapter. If the sidewalk vendor refuses to remove the cart, or if a cart has been abandoned, the city may cause the cart to be removed and may subsequently dispose of the cart (including any associated merchandise and food) if not claimed by the vendor within thirty days of removal by the city, or if an administrative appeal is filed related to the cart removal, then thirty days after a final decision in the administrative appeal (including the payment of any outstanding administrative fine).

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED _____, 2020.