



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: September 3, 2019

Agenda Item 7C

Approvals:

City Manager GM

Dept. Head CD

Attorney

Finance

Department: Community Development
Prepared By: Cecilia Gallardo-Daly, Community Development Director

Subject: *INTRODUCTION OF AN ORDINANCE ESTABLISHING SIDEWALK VENDING REGULATIONS*

Fiscal Impact: No. Permit fees are anticipated to offset the costs incurred by Staff's time to process and enforce the sidewalk vending permits.

Summary: Staff recommends that Council approve an Ordinance of the City of San Clemente establishing sidewalk vending regulations in compliance with Senate Bill (SB) 946, the Safe Sidewalk Vending Act.

Background: Prior law authorized a local authority, by ordinance, to adopt requirements for public safety, regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street. With the passing of SB No. 946, new state regulations on sidewalk vendors became effective on January 1, 2019. The new law prohibits a local authority from regulating sidewalk vendors, except in accordance with the provisions of the law. The proposed ordinance will establish sidewalk vending regulations that are consistent with SB 946.

Discussion: A "sidewalk vendor" is defined as a person who sells food or merchandise with or without the use of a pushcart, stand, or other non-motorized conveyance in certain public areas. A "roaming sidewalk vendor" is a sidewalk vendor who moves from place to place and stops only to complete a transaction. Whereas, a "stationary sidewalk vendor" vends from a fixed location. City Staff, working with the City Attorney's office, have prepared an ordinance that addresses sidewalk vending and specifies restrictions on both roaming and stationary sidewalk vendors. The proposed ordinance adds Chapter 5.50, Sidewalk Vending, to the San Clemente Municipal Code (SCMC) and is compliant with SB 946, in that any restrictions placed on sidewalk vendors are directly related to objective health, safety or welfare concerns.

SB 946 expands protections on sidewalk vending upon two types of public property: the right-of-way, such as sidewalks adjacent to streets, and at parks owned or operated by the City. Per SB 946, the City may restrict a vendor to operating within a specific area of the public right-of-way, subject to certain findings, and can bar stationary sidewalk vendors from exclusively residential zones. SB 946 also allows a City to prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the City if there is a contract giving a concessionaire the exclusive right to sell food or merchandise in the park. The City can also adopt time, place and manner requirements for vending in parks generally, including prohibiting it entirely in parks, if those regulations are (1) necessary to ensure the public's use and enjoyment

of natural resources and recreational opportunities, and/or (2) necessary to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of these parks or an intended specialized use. In addition, the ordinance can address what can be sold, the allowable hours, and distancing requirements for sidewalk vendors. The proposed ordinance contains standards and restrictions, based on objective health, safety, and welfare concerns to address all of these considerations. For example, due to the City's typically high volume of pedestrian traffic and physical dimensions of the public right-of-way in the Downtown/Del-Mar/ T-Zone, Pier Bowl Specific Plan, and North Beach commercial areas, the proposed ordinance prohibits sidewalk vending in the public right-of-way within these portions of the City.

Pursuant to SB 946, the City can require a City-issued permit or business license, but not both. Staff proposes a new sidewalk-vending permit because the City's current business license requirements are not sufficiently tailored to this type of commercial operation on public property or in the public right-of-way to adequately address negative impacts to the public health, safety, or welfare. More importantly, a separate permit with use-specific standards provides the City with better enforcement mechanisms for sidewalk vendors that fail to comply with the City's standards, such as permit revocation.

The proposed ordinance codifies the necessary portions of SB 946, and expands upon those areas of vending afforded local regulation by the state. The proposed ordinance includes new, robust definitions of sidewalk-vending related terms in Section 5.50.020. Sections 5.50.030 through 5.50.050 implement the sidewalk vending permit, which addresses both "roaming and stationary" sidewalk vendors. Sections 5.50.070 and 5.50.080 place restrictions on when, where, and what merchandise can be sold, including the specific parks where vending is prohibited. Sections 5.50.090-through 5.50.110 address enforcement, suspension, and revocation of the vending permits.

Of special note, SB 946 limits penalties for sidewalk vending violations to non-criminal remedies, such as administrative fines with specified maximums, provides for an ability-to-pay determination, and also requires the dismissal of any current criminal prosecutions that have not reached final judgement. These requirements are included in Section 5.50.110 of the City's proposed ordinance.

***Environmental
Review:***

This ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") because the ordinance is not a "project" within the meaning of State CEQA Guidelines, section 15378, because it has no potential for resulting in direct or indirect physical change in the environment. This ordinance is also exempt under section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that this code amendment will have a significant effect on the environment.

Recommended

Action: STAFF RECOMMENDS THAT the City Council:

Introduce Ordinance No. _____ entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE ADDING MUNICIPAL CODE TITLE 5, BUSINESS LICENSES AND REGULATIONS, CHAPTER 5.50, SIDEWALK VENDING, AND AMEND TITLES 8, HEALTH AND SAFETY, 9, PUBLIC PEACE, MORALS AND WELFARE, AND 12, STREETS, SIDEWALKS, AND PUBLIC PLACES, OF THE CODE, RELATING TO SIDEWALK VENDING REGULATIONS IN COMPLIANCE WITH SENATE BILL 946"

Attachments: 1. Sidewalk Vending Ordinance

Notification: San Clemente Times

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE ADDING MUNICIPAL CODE TITLE 5, BUSINESS LICENSES AND REGULATIONS, CHAPTER 5.50, SIDEWALK VENDING, AND AMEND TITLES 8, HEALTH AND SAFETY, 9, PUBLIC PEACE, MORALS AND WELFARE, AND 12, STREETS, SIDEWALKS, AND PUBLIC PLACES, OF THE CODE, RELATING TO SIDEWALK VENDING REGULATIONS IN COMPLIANCE WITH SENATE BILL 946

WHEREAS, pursuant to the police powers delegated to it by the California Constitution, the City has the authority to enact laws which promote the public health, safety, and general welfare of its citizens, including sidewalk vending, as long as these are consistent with SB 946; and

WHEREAS, in 2018, the California Legislature passed SB 946, adding Government Code sections 51036 through 51039, which prohibits cities from regulating sidewalk vendors, except in accordance with the provisions of SB 946; and

WHEREAS, based on the SB 946 findings presented in this Ordinance below, the City desires to add Chapter 5.50, Sidewalk Vending, to the San Clemente Municipal Code (SCMC) for sidewalk vending regulations in compliance with SB 946; and

WHEREAS, on August 20, 2019, the City Council considered the agenda report, the written and oral testimony received, and other evidence in the record for this Ordinance; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, the City Council of the City of San Clemente does ordain as follows:

Section 1. Recitals. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. CEQA Findings. The City Council finds that this ordinance is not subject to the requirements of California Environmental Quality Act ("CEQA") for the following reasons:

- A. This Ordinance is not a "project" within the meaning of State CEQA Guidelines, section 15378, because it has no potential for resulting in direct or indirect physical change in the environment.

- B. This Ordinance is exempt under section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that this code amendment will have a significant effect on the environment.

Section 3, SB 946 Findings. The City Council finds the standards and requirements of this Ordinance comply with the requirements of SB 946 for sidewalk vending, generally, and for sidewalk vending in parks as shown below:

- A. **The safe use of public right-of-way and City-owned property accessible by the public.** The City Council finds that standards and requirements imposed by this ordinance for the safe use of public places for those occupying such places are directly related to objective health, safety, and welfare concerns.
1. The standards requiring a minimum path of accessible travel are necessary to comply with the Americans with Disabilities Act and maintain minimum safe access along public sidewalks; and
 2. The standards for maintaining access to building entrances, and not blocking driveways, fire hydrants, parking areas and building storefront windows are necessary to guard the health and safety of the public, patrons, drivers, vendors and existing business owners and promote fire suppression and law enforcement practices that allow the City's safety personnel to observe activities within buildings and maintain access; and
 3. The installation, repair, maintenance, and removal of obstructions, whether of a temporary or permanent nature, in the public way must be regulated in order to protect the public health, safety, and welfare and to provide for the orderly administration and maintenance of the public access ways for the benefit of the community, while at the same time allowing reasonable accommodation and cooperative flexibility for providing necessary utility and other convenience services to the community; and
 4. Public and private persons who maintain and/or install obstructions, whether of a temporary or permanent nature, in the public way bear a responsibility to help preserve the public way and to contribute to the administrative and liability costs incurred by the community and caused by such encroachments; and
 5. The occupation of public property can, and does, impede public access to necessary public facilities, such as public transit, public parking, public parks, public institutions, including Police and Fire stations and schools, public and private medical offices and

hospitals, private property, and other similar land uses. Safe access to these facilities is a critical necessity of the City, and represents the highest priority for the safety of both those occupying public property and public right-of-way and the general public; and

6. The public right-of-way and City-owned/operated property within and adjacent to portions of the City zoned Mixed-Use 1 and 3.0 (MU1 and MU3.0) and the Pier Bowl Specific Plan area are heavily pedestrian-crowded areas. Additional obstructions, whether of a temporary or permanent nature, in the public way would result in an undue concentration of people, including visitors unfamiliar with the City, and commercial activity in the City's most heavily trafficked areas, which would negatively impact areas with an already high level of service and unreasonably interfere with existing business, pedestrian ingress and egress, the use of the Beach, and access to the Coast.

B. Sidewalk vending, generally. The City Council finds that standards and requirements imposed by this ordinance for sidewalk vending are directly related to objective health, safety and welfare concerns:

1. The permit requirements proposed are based upon compliance with other generally applicable laws including the Americans with Disabilities Act and the City's business license and special event permit requirements for work and/or activities in the public right of way; and
2. Unless properly regulated, sidewalk vending poses a unique risk to the health, safety, and welfare of the public, including, but not limited to, impacts to traffic, pedestrian safety, mobility, unsanitary conditions involving food preparation, and consumer protection; and
3. Sidewalk vending within five hundred (500) feet of schools impacts pedestrian and vendor safety due to overcrowding on sidewalks, which results in school children and their caretakers walking in the street and along the sidewalk to keep moving forward; and
4. Vending in close proximity to building entrances and exits impede the ability for pedestrians to exit and enter buildings and may create overcrowding situations close to building entrances and exits. Therefore, vending close to building entrances and exits require reasonable regulation; and
5. A portion of Police Services operates out of the City Hall building, and police personnel may need to quickly exit and enter the City Hall

building in order to respond to emergency situations. Similarly, law enforcement and fire fighters and fire officials may also need to quickly exit and enter police and fire stations and substations to respond to emergency situations. As such, vending in close proximity to City Hall and police and fire stations and substations require regulation to ensure that law enforcement and fire responders are not impeded; and

6. The SCMC requires most commercial businesses to be operated within enclosed structures, with the exceptions to that requirement contemplated in terms of special permitting, locational criteria, and operating standards. Roaming sidewalk vendors are inherently louder commercial operators as they are not beholden to a similar set of standards, and by their very nature operate outdoors at various, non-fixed locations, often passing through areas restricted for stationary sidewalk vending. Special restrictions are therefore necessary to ensure that roaming sidewalk vendors do not create unreasonable commercial activity noise that would negatively affect nearby residential land uses, whether those residences are located near more established commercial businesses or stationary sidewalk vendors; and
7. The inherent nature of sidewalk vending and the ability of such vendors to be located on private property and public streets and move quickly from place to place in the community, including near parks, schools, and other places frequented by children, warrants imposing certain regulatory measures to protect the health, safety, and welfare of the community; and
8. Fraud or misrepresentation in the course of vending constitutes an objective harm to the health, safety, and welfare of the City's residents; and
9. Sidewalk vending in a manner that creates a public nuisance or constitutes a danger to the public constitutes an objective harm to the health, safety, and welfare of the City's residents; and
10. SB 946 authorizes cities to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by a city; and
11. SB 946 authorizes cities to prohibit sidewalk vending of food or merchandise by stationary vendors in any park with a concession

stand operated by a vendor under exclusive contract with the City selling food or merchandise.

- C. **Sidewalk vending in parks.** The City Council finds that the Ordinance's restrictions on sidewalk vending in parks, generally, and in the parks discussed below, are (1) directly related to objective health, safety and welfare concerns; (2) necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; and/or (3) necessary to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of these parks or an intended specialized use:
1. Park Semper Fi, Marine Monument: (1) Sidewalk vending around the park would impede pedestrian circulation because the park's pathways are not wide enough to provide adequate and safe passage for vendors and pedestrians. (2) The monument site is designated as a special use park site and primarily intended for meditative and reflective purposes amongst the areas natural resources and an historical monument which offers a unique scenic view, generally used for solitude or contemplation. (3) The site is a small pocket park that is often used for specialized memorial events and other public and civic activities.
 2. Richard T. Steed Memorial Park: (1) Sidewalk vending would disrupt pedestrian access on the park's narrow pathways. (2) The public's use and enjoyment of the specialized recreational resources for organized sports would be significantly impacted due to the lack of sidewalks not in close proximity to all sports fields for vending activities. (3) The concentration of vending resulting from the limited areas of available sidewalk wide enough to provide access for vendors and pedestrians/park users would unreasonably interfere with the intended specialized use of the park.
 3. Ole Hanson Beach Club Grounds (1) Sidewalk vending would negatively impact pedestrian access to all club entry points and pool. (2) The public's use and enjoyment of the specialized recreational resources for aquatics, and enjoyment of the adjacent natural resources would be significantly impacted by commercial vending operations. (3) Sidewalk vending would unreasonably interfere with the site's historic and scenic character, and specialized use of the park.
 4. Trails (Forster Ranch Ridgeline, Sea Summit at Marblehead, Rancho San Clemente, Talega, Beach Trail): (1) The City's trail system is comprised of generally narrow paths with very limited access to trail

heads, many situated in exclusively residential zones, which lack immediate access to public safety facilities and resources, negatively impacting the public health, safety, and welfare. The additional obstructions caused by sidewalk vending on already narrow paths would further restrict accessibility creating an unnecessarily detrimental and dangerous impact to the public health and safety, especially for those with mobility challenges. (2) All trails are specialized parks meant to provide the public with exposure to undisturbed natural resources, the presence of commercial activities in these areas are inherently damaging to the public's use and enjoyment of these natural resources and recreational opportunities. For the Beach Trail specifically, the presence of sidewalk vending within an area with a high volume of pedestrian, bicycle, and enforcement personnel's motorized vehicle traffic impacts the public's use and enjoyment of the specialized recreational resources due to the potential for partial or complete blockage of an active multi-modal transportation corridor.

5. Municipal Golf Course: (1) Sidewalk vending at this park would negatively impact the public health, safety, and welfare, as well as that of vendors, due to the regular presence of motorized vehicles, rental golf carts, on the park's paved surfaces, and there are no other areas vending could occur. Additionally, the potential for injury to vendors from stray golf balls increases vendor's health and safety risks within the park. (2) The public's use and enjoyment of the specialized recreational resources for golf, and enjoyment of the property's natural resources would be significantly impacted by commercial vending operations.
6. Municipal Pier: (1) Sidewalk vending on and around the base of the pier and on the pier would create obstructions due to the consistently high volume of pedestrian traffic which would negatively impact the public health, safety, and welfare. (2) The public's use and enjoyment of the natural resources and recreational activities would be significantly and negatively impacted by additional commercial operations at the pier due to the high volume of pedestrians and fishing activities consistently taking place. (3) Limitations on vending in this area are necessary to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of this park as there are already provisions for commercial vendors on and around the pier.

Section 4. Chapter 5.50 Added. San Clemente Municipal Code title 5, Business Licenses and Regulations, chapter 5.50, Sidewalk Vending, is hereby added, as follows:

Title 5 - BUSINESS LICENSES AND REGULATIONS

Chapter 5.50 - SIDEWALK VENDING

Section 5.50.010 - Purpose.

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

Section 5.50.020 - Definitions.

As used in this chapter:

- A. "Adult-oriented material" means sexually-oriented merchandise or sexually-oriented material or any other products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical parts (as those terms are defined in Chapter 17,88 – Definitions, of this code).
- B. "Cart" means any pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used in conjunction with a sidewalk vending operation.
- C. "Certified Farmers' Market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter.
- D. "Enforcement Officer" means employees designated by the City Manager as having the authority to enforce this chapter, including but not limited to the License Collector, City Building Inspectors, Code Compliance Officers, Water Quality Inspectors, Police Officers of the City, City Park Rangers, Fire Services Inspectors, and Marine Safety Lifeguards.
- E. "Exclusively residential zone" means the area encompassed by the

outer limits of a zoning district shown on the City's official Zoning Map, or Specific Plan land use map within which is zoned or used primarily for residential purposes. The presence of non-conforming non-residential land uses within an otherwise residential zone shall not deem such zone as not exclusive for residential uses. Where two zones meet, only one of which is an exclusive residential zone, the outer limits of the residential zone shall be deemed to include any public right-of-way between the two zones including the sidewalk adjacent to the non-residential zone.

- F. "Food and Merchandise" means only tangible items for immediate consumption and in possession of the vendor at the time and point of sale.
- G. "High Level of Service" means any sidewalk (as that term is defined in this chapter) where the volume of pedestrians (including people on human-powered vehicles) is of a sufficient amount to result in pedestrians unnecessarily entering areas of the public right-of-way intended for motor vehicles in order to circumvent the vendor or their equipment, due to obstruction from the vendor, the vending equipment, or the customer queue, along the public sidewalk or public pathway.
- H. "License Collector" means the License Collector of Finance, or their designee.
- I. "Merchandise," see definition of "Food and Merchandise."
- J. "Park" means a public park owned or operated by the City, and includes, but is not limited to, all grounds associated with the park, such as fields, courts, beach areas, shoreline and ocean, walkways, paths, trails, drive entrances, driveways, drive aisles, parking lots, buildings and structures, landscaped areas, courtyards, amphitheaters, playgrounds, picnic tables, benches and spectator seating areas, waste receptacles, and sidewalks around the park adjacent to public right-of-way and within 20 feet of a vehicular entrance to the park.
- K. "Roaming sidewalk vendor or vending" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.
- L. "SB 946" means Senate Bill 946 of the 2017-2018 California legislative session, an act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government

Code, which was approved by the Governor on September 17, 2018, and became effective on January 1, 2019.

- M. "Sidewalk vendor or vending" means a person who sells Food or Merchandise from a Cart, or from one's person, upon a public Sidewalk or other pedestrian path. "Sidewalk vendor or vending" does not include the sales of any services, items for rent, on-line sales, or the sales of products that are not in the possession of the sidewalk vendor at the time of sale.
- N. "Sidewalk" means a portion of a street between the curb line and the adjacent property line, or an easement or right-of-way held by the city across the front of private property, and intended for the use of pedestrians. For purposes of this Chapter, "sidewalk" shall also include a paved path or walkway owned by the City that is specifically designed for pedestrian travel. "Sidewalk," for the purposes of this chapter, does not include landscaped and non-pathway areas, including turf, whether natural or artificial, meant for passive recreation or sporting activities, decorative rock and gravel areas, beach sand, benched viewing areas and adjacent access walkways, and other similar areas not intended specifically for pedestrian travel and access to public or private facilities.
- O. "Special Event Permit" means a City-issued permit to hold a special event, as defined in Section 8.72.020 of this Code. Events covered under a "Special Event Permit" shall also include City or other public agency events that would otherwise qualify as a special event but no permit is required by the City.
- P. "Stationary Sidewalk Vendor or Vending" means a sidewalk vendor who vends from a fixed location.
- Q. "Swap meet" means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.
- R. "Zone," as in a residential zone, non-residential zone, or mixed-use zone, means a portion of the City within which certain uses of land and buildings are permitted or prohibited and within which certain development standards are established as set forth and specified in Title 17, Zoning, of this Code or any applicable Specific Plan.

Section 5.50.030 - Permit required and exemptions.

- A. **Permit required.** All sidewalk vendors shall obtain a sidewalk vending permit from the City prior to engaging in any sidewalk vending activities. All persons associated with a sidewalk vending operation, including, but not limited to, employees or independent contractors, are considered sidewalk vendors and are required to obtain separate and individual sidewalk vending permits.
- B. **Exemptions.** A sidewalk vending permit shall not be required for the following activities:
1. The sale of agriculture products on the site where the product is grown.
 2. Catering for private parties held exclusively on private property and not open to the general public.
 3. Events permitted pursuant to a lawfully issued Special Events Permit including but not limited to a Certified Farmers' Market, Swap Meet, street fairs, outdoor concerts, sport league opening day, and business sidewalk sales.

Section 5.50.040 - Application for sidewalk vending permit.

- A. **Application information.** Any person wishing to obtain a San Clemente sidewalk vending permit shall submit a completed San Clemente sidewalk vending permit application form to the License Collector. All of the following information is required:
1. Name, current mailing address, and phone number of the vendor; and
 2. If the vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal; and
 3. If the vendor will have employees, the name(s), current mailing address(es), and phone numbers of the person(s) who will be employed as stationary or roaming sidewalk vendor(s); and
 4. The number of sidewalk vending operations the vendor intends to operate within the City; and
 5. The days and hours of operation the sidewalk vendor intends to operate; and

6. Whether the vendor intends to operate as a stationary or roaming sidewalk vendor; and
7. If applicable, a description of the type of food proposed to be offered for sale or exchange; and
8. If applicable, a description of the merchandise/goods to be offered for sale or exchange; and
9. A copy of the California seller's permit with the sales tax number issued by the California Department of Tax and Fee Administration to the vendor; and
10. One of the following forms of identification, which, upon collection, shall not be available by the City to the public for inspection and shall remain confidential and not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order:
 - a. A copy of the valid California Driver's License or Identification Card issued to the vendor; or
 - b. A copy of the individual taxpayer identification number issued to the vendor; and
11. If preparing or selling food, a copy of the Orange County Health Department permit issued to the vendor; and
12. A description or site plan map of the proposed location(s) where vending will take place, showing that the sidewalk location maintains a minimum of forty-eight inches (48") of accessible route area when considering the vendor equipment and anticipated customer queue, in compliance with the Americans with Disabilities Act; and
13. A copy of general liability policy naming the City as additional insured in the amount of \$1,000,000.00; and
14. An acknowledgement that the vendor will comply with all generally applicable local, state, and federal laws; and
15. A certification by the vendor that to his or her knowledge and belief, the information contained in the application is true; and

16. An agreement by the vendor to indemnify, defend (at the vendor's sole cost and expense), and hold the City, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance or failure to issue a sidewalk vending permit, the City's decision to approve or its refusal to approve the sidewalk vending permit, the operation of the sidewalk vending use and activity, and the process used by the City in making its decision. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee, City, and/or the parties initiating or bringing such proceeding; and
17. An acknowledgement that use of public property is at the vendor's own risk, and the City does not take any steps to ensure public property is safe or conducive to sidewalk vending operations; and
18. A list of all other cities or other jurisdictions in which the vendor has operated a sidewalk vending operation or similar operation within the past twelve (12) months, whether a permit was required to operate, and if so, whether the permit had been revoked in the past twelve (12) months.

- B. **Fee.** At the time the application or renewal application is filed, the applicant shall pay the permit processing fee established by separate resolution of the City Council.

Section 5.50.050 - Review of permit application and determination.

- A. **Review authority.** Upon acceptance of a properly completed and filed sidewalk vendor permit application and payment of the application fee as required by Section 5.50.040, the License Collector shall conduct a preliminary investigation to determine whether to approve or deny the permit as compliant with Chapter.
- B. **Findings.** The License Collector shall deny an application for a permit if he or she makes any of the following findings:
1. The applicant has failed to pay the application permit fee.
 2. The applicant has made one or more material misstatements

in the application for a permit.

3. The applicant does not have a valid social security card, valid California Driver's License, California Identification Card, or valid individual taxpayer identification number.
 4. The applicant's vending operation, as described in the application, is inconsistent with the standards, conditions, and requirements of this Chapter.
 5. It is determined that the applicant does not possess all federal, state, and local permits and licenses necessary to engage in the activity in which he or she seeks to engage.
 6. The applicant has had a sidewalk vending permit or similar permit revoked within the past twelve (12) months in the City or any other jurisdiction.
- C. **Timing of determination.** The License Collector shall make such determination within no more than thirty (30) days of acceptance to approve or deny the application.
- D. **Notice of determination.** The License Collector shall provide the applicant with written notice of his or her decision to the address indicated in the application.
1. If the application is approved, the License Collector shall endorse his or her approval on the application and shall, upon payment of the prescribed fee, issue the permit to the applicant.
 2. If the application is denied, the License Collector shall include in the written notice the reasons for disapproval shall be noted on the application.

Section 5.50.060 - Permit term, transferability, and display.

- A. **Term.** A sidewalk vending permit issued pursuant to this Chapter shall automatically expire one (1) year from the date issued, unless an earlier expiration date is noted on the permit.
- B. **Transferability.** A sidewalk vending permit shall not be transferable to any other entity or person and is valid only as to the original applicant for the term stated.

- C. **Display.** Such sidewalk vending permit shall, during the time such permittee is engaged in sidewalk vending, be displayed in a conspicuous fashion attached to the vendor's Cart. Sidewalk vendors shall be required to exhibit their permits and/or licenses at the request of any person. If multiple sidewalk vendors are staffing a sidewalk vending operation, each vendor shall, during the operation of sidewalk vending, conspicuously attach their permit to the vending Cart.

Section 5.50.070 - General sidewalk vending operating standards and requirements.

- A. **General standards and requirements.** All sidewalk vendors shall meet the following standards and requirements:
1. The sidewalk vendor is duly licensed and meets all requirements of section 5.50.030; and
 2. The sidewalk vendor shall only set up their vending operation, or roam, on a sidewalk (as that term is defined in this chapter), whether in the public right-of-way or at an allowed Park while still leaving a minimum of forty-eight (48) inches of accessible path of travel. The reduction of a sidewalk for vending purposes shall not be for a distance greater than eight (8) feet within any sixteen (16) foot span along the adjacent sidewalk. No vending shall occur within an area that meets the definition of a "High Level of Service;" and
 3. No sidewalk vending is permitted within any portion of public right-of-way, on any sidewalk, or at any park (as those terms are defined in this chapter) located in the general zone boundaries of, or adjacent to any properties within, the Mixed-Use 1 zone, Mixed-Use 3.0 zone, or Pier Bowl Specific Plan Area.
 4. The sidewalk vendor maintains the vending area in a clean, orderly, and sanitary condition; and
 5. The sidewalk vendor shall not use a horn, siren, amplified music, or any other audible device to attract attention to the presence of the vending operations or Cart; and
 6. Prior to leaving the vending area, the sidewalk vendor shall collect all litter and debris, that was or is, within 10 feet of the vendor that was generated by the vending activities; and

7. There shall be no disposal of cooking material or waste, including but not limited to any fats, oils or greases, into the City's trash receptacles, storm drains, plant material, or foliage. Vendors shall immediately clean up any food, grease, or other fluid or item related to the sidewalk vending operation that falls onto public property; and
8. The sidewalk vendor location shall not block public access to any entrances to private or public buildings, private or public driveways, parking spaces, building windows, utility meters, hook and service panels, or block public visibility of permitted signage located on the building or adjacent property; and
9. No customer tables, customer chairs, fences, shade structures, other site furniture, or any freestanding signs shall be permitted in conjunction with the vendor's vending activities; and
10. The sidewalk vendor shall not attach or use any water lines, electrical lines, or gas lines to any buildings, structures, or other private or public facilities not associated with the vendor's equipment, during vending operations; and
11. Storage or display of refuse, equipment, materials, goods, wares, food, or merchandise associated with the vendor, outside of the vendor's Cart, is prohibited. All food and merchandise shall be stored either inside or affixed to the Cart, or carried by the sidewalk vendor. Food and merchandise shall not be stored, placed, or kept on any public property. If affixed to the Cart, the overall space taken up by the Cart shall not exceed the size requirements provided in this Chapter; and
12. The sidewalk vendor shall not display any signage without first obtaining the appropriate sign permits from the City Planning Division; and
13. No signage or advertising related to the sidewalk vendor and/or the vending operations shall be electrical, flashing, wind powered, animated; and
14. The sidewalk vendor shall display any and all required business and health licenses in a conspicuous fashion, attached to the vendor's Cart; and

15. The sidewalk vendor shall remit all required and applicable taxes to the applicable taxing agencies; and
16. No vending shall occur within five hundred (500) feet of a Certified Farmers' Market, a Swap Meet, or an event held pursuant to a Special Events Permit; and
17. The sidewalk vendor shall not leave his or her sidewalk vending operation unattended; and
18. The sidewalk vendor shall not leave his or her sidewalk vending operation to solicit business for the vending operation; and
19. No equipment or objects used for sidewalk vending purposes may be left or maintained in public spaces or in any portion of the public right-of-way beyond the allowed hours of operation. Any equipment or objects left overnight in public spaces or in any portion of the public right-of-way will be considered discarded and may be seized or disposed of by the City, and may be grounds for termination of the sidewalk vending permit.
20. Sidewalk vendors that sell food shall maintain a trash container in or on their Cart and shall not empty their trash into public waste containers, or private waste containers without the permission of the property owner. The size of the Sidewalk Vendor's trash container counts as part of the size limit of a Cart.
21. The sidewalk vendor shall not contain or use propane, natural gas, batteries, or other explosive or hazardous materials. The vendor shall not use an open flame for the sidewalk vending operation; and
22. The sidewalk vendor shall not sell alcohol, marijuana, adult-oriented material, tobacco products, products that contain nicotine, or any product used to smoke/vape nicotine and/or marijuana, or any products not permitted to be sold in the zone in which the sidewalk vendor is located; and
23. No vending shall occur within fifty (50) feet of any street intersection or crosswalk as measured from any point where curbs or edges of pavement meet within the subject intersection or crosswalk; and

24. No vending shall occur within five hundred (500) feet of private or public academic school attended by elementary, junior high, or high school pupils; and
25. No vending shall occur within ten (10) feet of any street lights, edges of tree wells, parking meters, or above-ground utility structures; and
26. No vending shall occur within ten (10) feet of any existing subsurface utility box, valve, or vault; and
27. No vending shall occur within ten (10) feet of another vendor; and
28. No vending shall occur within ten (10) feet of any bus stop locations, red curbs, fire hydrant, fire escape, loading zone, handicapped parking space or access ramp, or at locations where there are existing above-ground amenities such as newsstands or street furniture, including, but not limited to benches and bike racks; and
29. No vending shall occur in roadways, alleyways, medians, pedestrian islands, bikeways, or any other non-vehicular area located between curbs, or where curbs do not exist, road edges, of the area identified as the public right-of-way; and
30. No vending shall occur within twenty-five (25) feet of a doorway to any building, store, theater, movie house, house of worship, or place of public assembly; and
31. No vending shall occur with two hundred (200) feet of City Hall, any police station, or any fire station; and
32. In parks (as that term is defined in this chapter), no vending shall occur within fifty (50) feet of any shade structures, benches, trash receptacles and enclosures, picnic table areas, sports fields and associated fences and spectator seating areas, playground areas, or specialized sport facilities (i.e. skateboarding facilities, pools, tennis and basketball courts, gym equipment, and other similar facilities).
33. No vending shall occur within one hundred (100) feet of any posted park facility rental, whether indoors or outside.
34. No vendors shall use expanded polystyrene (Styrofoam) food

service ware; and

35. The sidewalk vendor shall not transact business with patrons in vehicles, including, but not limited to vehicles parked on public or private property or public right-of-way, or stopped temporarily in the public right-of-way; and
36. No vending shall occur within 200 feet of a freeway onramp or off-ramp; and
37. No vending shall occur within 30 feet of an automated teller machine.

B. **Specific standards and requirements.** In addition to the generally applicable standards and requirements in Subdivision A above, sidewalk vendors shall also comply with the specific standards and requirements as applicable in Section 5.50.080.

Section 5.50.080 - Specific sidewalk vending standards and requirements.

- A. **Stationary sidewalk vending.** In addition to the standards and requirements in Section 5.50.070, all stationary sidewalk vendors shall meet the following:
1. Stationary sidewalk vendors and all aspects of their operations, including but not limited to, any Cart, any associated equipment, and any space occupied by the vendor or their employees, shall not occupy a space exceeding horizontal dimensions of a square measuring six (6) feet by six (6) feet. No Cart, or any associated equipment shall exceed a height of four (4) feet; and
 2. Stationary sidewalk vendors shall be prohibited from operating or establishing in any and all exclusively residential zones of the City; and
 3. Stationary sidewalk vendors may operate in non-residential zones of the City, including mixed use zones, with the exception of the exclusively residential portions of horizontally mixed-use zones, such as MU 5.1; and
 4. Stationary sidewalk vending shall only be conducted no earlier and no later than the hours of operation of "brick-and-mortar" businesses located on the same street and within 200

feet of the stationary sidewalk vendor. If no businesses operate on the same street or are located within 200 feet of the stationary sidewalk vendor, stationary sidewalk vendors operating in non-residential zones of the City shall only operate between the hours of 8:00 AM and sunset of every day.

B. Roaming sidewalk vending. In addition to the standards and requirements in Section 5.50.070, all roaming sidewalk vending shall meet the following:

1. Roaming sidewalk vendors shall not use any Cart which exceeds a total height of four (4) feet, a total width of three (3) feet, and a total length of five (5) feet; and
2. Roaming sidewalk vending hours for zones with any residential development, conforming or otherwise, shall be conducted between the hours of 8:00 AM and 5:00 PM on weekdays, and between the hours of 10:00 AM and 6:00 PM on the weekend; and
3. Roaming sidewalk vendors for non-residential zones shall only be conducted no earlier and no later than the hours of operation of businesses on the same street and within 100 feet of the roaming sidewalk vendor. If no businesses operate on the same street or are located within 100 feet of the roaming sidewalk vendor, roaming sidewalk vendors in non-residential zones of the City shall only operate between the hours of 8:00 AM and sunset of every day.

C. Sidewalk vending in parks. In addition to the standards and requirements in Section 5.50.070 and, as applicable, the standards and requirements in Sections 5.50.080 and 5.50.090, all sidewalk vending in parks shall meet the following:

1. Sidewalk vending of food or merchandise by stationary sidewalk vendors or by roaming sidewalk vendors is prohibited in the following parks:
 - a. Park Semper Fi, Marine Monument
 - b. Richard T. Steed Memorial Park
 - c. Ole Hanson Beach Club

- d. Trails: Forster Ranch Ridgeline, Sea Summit at Marblehead, Rancho San Clemente, Talega, Beach Trail
 - e. Municipal Golf Course
 - f. Municipal Pier
2. Sidewalk vending of food or merchandise by stationary vendors shall be prohibited in any park with a concession stand operated by a vendor under exclusive contract with the City selling food or merchandise.
 3. Sidewalk vendors shall not begin operations prior to one (1) hour after the park opens and shall cease operations one (1) hour prior to the close of the park. The term "operations" in the context of this standard includes setting up and taking down Carts and other activities associated with vending, even if not explicitly engaged in the act of selling merchandise.

Section 5.50.090 - Suspension and revocation of sidewalk vending permit.

- A. **Causes for suspension or revocation.** A sidewalk vendor permit issued under this Chapter may be suspended or revoked by the License Collector after four or more violations of this Chapter in accordance with Section 5.50.110, subdivision B.1.d, at their discretion, for any of the following causes:
 1. Fraud or misrepresentation in the course of vending;
 2. Fraud or misrepresentation in the application for the permit; or
 3. Vending in a manner that creates a public nuisance or constitutes a danger to the public.
- B. **Notice.** Notice of the suspension or rescission of a sidewalk vendor permit issued under this Chapter shall be mailed, postage prepaid, to the holder of the sidewalk vendor permit at his or her last known address.
- C. **Future permits.** No person whose sidewalk vending permit has been revoked pursuant to this chapter shall be issued a sidewalk vending permit for a period of two (2) years from the date revocation becomes final.

Section 5.50.100 - Appeal.

A person wishing to appeal a determination of the License Collector, or their designee, or to appeal a citation issued pursuant to this chapter, may file an appeal per Chapter 1.20, Administrative Fines.

Section 5.50.110 - Penalties and enforcement.

- A. **Violation.** It is unlawful for any person to violate any provision or fail to comply with any requirements of this Chapter.
- B. **Administrative fines.**
1. Any violation of this Chapter committed with a valid permit shall be punishable as provided below:
 - a. For the first violation, an administrative fine not exceeding one hundred dollars (\$100).
 - b. For a second violation within one year of the first violation, an administrative fine not exceeding two hundred dollars (\$200).
 - c. For a third or subsequent violation within one year of the first violation, an administrative fine not exceeding five hundred dollars (\$500).
 - d. For a fourth or subsequent violation, the Director may rescind or suspend the permit as provided in Section 5.50.090.
 2. Any violation of this Chapter committed without a valid permit shall be punishable as provided below:
 - a. For the first violation, an administrative fine not exceeding two hundred and fifty hundred dollars (\$250).
 - b. For a second violation within one year of the first violation, an administrative fine not exceeding five hundred dollars (\$500).
 - c. For a third or subsequent violation within one year of the first violation, an administrative fine not exceeding one thousand dollars (\$1,000).

3. Upon proof of a valid permit, the administrative fines set forth in Subdivision B.2 (fines without a valid permit) shall be reduced to the fines set forth in Subdivision B.1 (fines with a valid permit.)

C. Additional and alternative penalties.

1. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in this Section shall not be assessed.
2. The City may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.
3. Failure to pay an administrative fine pursuant to this Section shall not be punishable as an infraction or misdemeanor.

D. Ability-to-pay determination.

1. When assessing an administrative fine pursuant to Subdivision B, the Enforcement Officer shall take into consideration the person's ability to pay the fine. If deemed appropriate, the Enforcement Officer shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination.
2. The person may request an ability-to-pay determination at an appeal hearing, or make a request by submitting a written request to the City Clerk while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.
3. If the person meets the criteria described in Government Code section 68632, subdivision (a) or (b), the City shall accept, in full satisfaction, twenty percent (20%) of the administrative fine imposed.

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

before the trial court that entered the judgment of conviction in his or her case.

- F. **Health codes.** Nothing contained herein shall be construed to impede the City's or County's ability to enforce County Health Department codes and regulations.

Section 5.50.120 - Severability.

If any provision or clause of this chapter or the application thereof is held unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, clauses or applications of this chapter which can be implemented without the invalid provision, clause or application, it being hereby expressly hereby declared that this chapter, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, adopted, and/or ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, and/or phrases be declared invalid or unconstitutional.

Section 5. Chapter 8.30 Amendment. San Clemente Municipal Code title 8, Health and Safety, Chapter 8.30, Prohibition - On Use Of Expanded Polystyrene Food Service Ware, subdivision A, is hereby amended as follows (additions shown in underline, deletions shown in ~~strikeout~~):

8.30.040 - Exceptions.

A. Foods prepared or packaged outside the City of San Clemente, which are not sold or offered for immediate consumption by the same entity, or an associated entity, as the entity preparing or packaging the foods, are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of San Clemente are encouraged to follow the provisions of this Chapter.

Section 6. Chapter 8.76 Amendment. San Clemente Municipal Code title 8, Health and Safety, Chapter 8.76, Weeds And Refuse On Sidewalks And Private Premises, is hereby amended as follows (additions shown in underline, deletions shown in ~~strikeout~~):

8.76.020 - Sidewalk—Duty to clean and maintain.

It shall be unlawful for any person to fail, refuse or neglect to keep the sidewalk in front of his or her house, place of business, whether temporary or permanent, or premises in a clean and wholesome condition.

Section 7. Chapter 9.04 Amendment. San Clemente Municipal Code title 9, Public Peace, Morals, and Welfare, Chapter 9.04, Offenses Against Public Peace And

Decency, subdivision F, is hereby amended as follows (additions shown in underline, deletions shown in ~~strikeout~~):

9.04.090 - Solicitation or Sale of Goods in or about Public Places.

- F. Nothing contained in this section shall be so construed as to apply to activities such as, but not limited to, a sightseeing tour operating under and by virtue of a permit from the public utilities commission and for which tour a fixed charge is made to the person carried; sidewalk vending operations subject to a sidewalk vending permit issued by the City; and annual Fiesta, charitable, organizational or similar activities which have received City approval.

Section 8. Chapter 12.28 Amendment. San Clemente Municipal Code title 12, Streets, Sidewalks, and Public Places, Chapter 12.28, - Use of designated City-owned facilities, is hereby amended as follows (additions shown in underline, deletions shown in ~~strikeout~~):

12.28.010 - Use of designated City-owned facilities.

Any person wishing to use any City-owned facility, including but not limited to buildings, parks, beaches, and trails, for the purpose of practicing, carrying on, or conducting any commercial business, occupation, or profession, shall apply for a permit to do so by submitting a completed "application for permit to use recreational facilities" form prescribed by the City of San Clemente Department of Beaches, Parks and Recreation, unless exempted from this required permit pursuant to another section of the code, or state or federal law. The application for permit to use recreational facilities shall be submitted along with the required fees to the City of San Clemente Department of Beaches, Parks and Recreation. The City may charge a fee in connection with the processing of such application. In considering a permit application, the Department of Beaches, Parks and Recreation may evaluate the types of goods proposed to be sold, the applicant's ability to comply with applicable laws and regulations in the sale of the proposed goods, including but not limited to requirements pertaining to food handling, and any other factors and criteria as may be useful in considering the application.

Except for a person holding a permit as described in this section, no person shall practice, carry on, or conduct any commercial business, occupation, or profession in any City-owned facility, including but not limited to buildings, parks, beaches, and trails, or sell or offer for sale any food, beverage, merchandise, article, or anything whatsoever in any such City-owned facility, unless exempted from this required permit pursuant to another section of the code, or state or federal law. This prohibition shall apply to

the use of any park, beach, or other City-owned facility by a camp or other group that has charged tuition or other fees to participants covering the period during which participants are present at the City-owned facility with the camp or group. This prohibition shall also include the sale or vending of goods or services of any kind, including but not limited to food and beverage, at any City-owned facility or in connection with any City-sponsored or City-approved event.

Section 9. Existing Code Provisions. All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

Section 10. Publication. The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code, section 36933.

Section 11. Records. The documents and materials associated with this ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at City Hall, 910 Calle Negocio, San Clemente, CA 92673.

Section 12. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

APPROVED AND ADOPTED this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor Pro Tem of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY