



CITY OF POMONA COUNCIL REPORT

October 21, 2024

To: Honorable Mayor and Members of the City Council

From: Anita D. Gutierrez, City Manager

Submitted By: Betty Donavanik, Development Services Director

SUBJECT: ADOPTION OF URGENCY ORDINANCE NO. 4351 AND INTRODUCTION AND FIRST READING OF ORDINANCE NO. 4349 AND ADOPTION OF RESOLUTION NO. 2024-155 AMENDING POMONA CITY CODE CHAPTER 30 (LICENSES, PERMITS AND MISCELLANEOUS REGULATIONS), ARTICLE X (SIDEWALK VENDING) AND CREATING NEW REGULATIONS FOR SIDEWALK VENDING OPERATIONS

RECOMMENDATION:

It is recommended that the City Council take the following actions:

Introduce, waive further reading, and adopt the following:

- 1. URGENCY ORDINANCE NO. 4351 – AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, PURSUANT TO SECTION 510 OF THE CITY CHARTER, AMENDING POMONA CITY CODE CHAPTER 30 (LICENSES, PERMITS AND MISCELLANEOUS REGULATIONS), ARTICLE X (SIDEWALK VENDING) AND CREATING NEW REGULATIONS FOR SIDEWALK VENDING OPERATIONS;**
- 2. ORDINANCE NO. 4349 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING POMONA CITY CODE CHAPTER 30 (LICENSES, PERMITS AND MISCELLANEOUS REGULATIONS), ARTICLE X (SIDEWALK VENDING) AND CREATING NEW REGULATIONS FOR SIDEWALK VENDING OPERATIONS; and**

Adopt the following resolutions:

- 3. RESOLUTION NO. 2024-155 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING THE RULES AND REGULATIONS FOR SIDEWALK VENDING AND FINDING THE SAME EXEMPT FROM CEQA; and**
- 4. RESOLUTION NO. 2024-183 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING THE FISCAL YEAR 2024-25 OPERATING BUDGET BY APPROPRIATING \$16,000 FROM THE GENERAL FUND RESERVES TO COVER OVERTIME EXPENSES FOR PUBLIC OUTREACH FOR THE CITY’S SIDEWALK VENDING PROGRAM**

EXECUTIVE SUMMARY:

On October 21, 2019, in response to Senate Bill 946 (“SB 946) enacted in 2018, the City of Pomona (“City”) City Council adopted Ordinance No. 4270 creating a Sidewalk Vending Program. The Program implemented objective public health, safety and welfare regulations pertaining to sidewalk vending in compliance with SB 946. The proposed Urgency Ordinance No. 4351 (Attachment No. 1) and Ordinance No. 4349 (Attachment No. 2) along with proposed Resolution No. 2024-155 (Attachment No. 3) seeks to enhance the Sidewalk Vending Program with amended Rules and Regulations that would encourage entrepreneurship, providing economic opportunity for people to support themselves and their families, reflecting the values of the City while also ensuring consumer protection, especially with respect to compliance with public health standards, and coordinate the multiple uses of the public right-of-way ensuring the unobstructed flow of pedestrian traffic on public sidewalks and pedestrian paths, and vehicular traffic on roadways.

SB1439/GOVERNMENT CODE §84308 APPLICABILITY:

When this box is checked, it indicates the agenda item is subject to the Levine Act SB1439 requirements. Councilmembers are reminded to check their campaign contributions and determine whether they have received a campaign contribution of \$250 or more that would require disclosure and/or recusal from discussing or acting on this agenda item. Campaign contributions of \$250 or more made 1) by any person or entity who is identified in the agenda report as the applicant or proposer or 2) on behalf of the applicant or participant, including a parent, subsidiary or otherwise related business entity, or 3) by any person who has a financial interest in the agenda item requires a councilmember to comply with SB1439.

FISCAL IMPACT:

The Sidewalk Vending Program proposes to include a vendor education workshop and street outreach led by staff from the Development Services Department, Code Enforcement Division. Due to the majority of the sidewalk vendors operating during the evening, staff overtime is

necessary for the outreach. The total estimated overtime costs is \$16,000 and will be appropriated in the following line item:

- Development Services Code Enforcement (101-1740-51030-00000) \$16,000

This request through the adoption of Resolution No. 2024-183 will amend the FY 2024-25 General Fund Operating budget by increasing appropriations by \$16,000.

PREVIOUS RELATED ACTION:

On October 21, 2019, the City Council adopted Ordinance No. 4270 and Resolution No. 2019-162 which created a Sidewalk Vending Program and established Rules and Regulations for sidewalk vending. The Program implemented objective public health, safety and welfare regulations pertaining to sidewalk vending in compliance with SB 946.

DISCUSSION:

The City encourages entrepreneurship and economic opportunities for people to support themselves and their families. Although sidewalk vending has the potential to foster active and social communities, vending from sidewalks can also create dangers to public health, safety, and welfare if not adequately regulated. The existing Rules and Regulations adopted in 2019 allows for a permitting and licensing process, by the City and the Los Angeles County Health Department to provide consumer protection, especially with respect to compliance with public health standards. The Regulations also established standards imposed on stationary sidewalk vendors requiring a minimum unobstructed path of accessible travel to assure wheelchair access to the sidewalks and to comply with the Americans with Disabilities Act as well as maintain minimum safe access along public sidewalks for all. For safety reasons, the Regulations also include areas where sidewalk vendors are prohibited due to high vehicle traffic areas and high pedestrian traffic areas.

Since the adoption of the Sidewalk Vending Program in 2019, the City has seen a significant increase in sidewalk vending. A survey of sidewalk vendors was conducted in June 2024 and showed approximately 115 vendors operating throughout the City, with a majority along the City's main corridors of Holt Ave. & Indian Hill Blvd., S. Garey & Rio Rancho Rd./Lexington Ave., Holt Ave. & Park Ave., and Holt Ave. & Towne Ave.. Code Enforcement has seen an increase in vendors since the survey and estimates approximately 150 vendors currently operating throughout the City. Of the 150 vendors, only 24 are operating legally and have the required permits. Those permitted include the vending of pre-prepared food items (i.e. corn, tamales, hot dogs, ice cream, and fruit) and non-food items (i.e. wireless phones, flowers, gifts, and balloons).

The unpermitted sidewalk vendors are currently operating in a manner that pose a threat to public health, safety and welfare. The large setup of the vending equipment and associated tables, tents, etc. in addition to the lines of customers that create a crowd obstruct the flow of pedestrian traffic on public sidewalks. The free flow of pedestrian traffic is particularly important to the safety of the elderly, the very young, individuals with disabilities, and others who are less able to navigate

through crowds and around obstacles or hazards and are endangered by having to navigate off and onto curbs into the streets when sidewalks are blocked.

Additionally, on October 14, 2022 at 7:42 p.m. a driver making an unsafe turn collided with the curb line and proceeded to drive on the sidewalk injuring approximately 12 people, including one fatality, each person was waiting to purchase food or pick up their order from a sidewalk food vendor.

The City has an important and substantial public interest in providing regulations to prevent safety, traffic and health hazards, as well as to preserve the peace, safety and welfare of the community. Therefore, the Urgency Ordinance is being presented to the City Council with the finding that the immediate regulation of sidewalk vending benefits the City as a whole as it leads to orderly commerce; and it is also necessary to protect public health, safety, and welfare, while accommodating legitimate commercial uses that generally promote an active and social pedestrian environment within appropriate areas with compatible land uses of the City.

The proposed Urgency Ordinance, Ordinance and accompanying Rules and Regulations is necessary to ensure sidewalk vendors comply with public health standards, adhere to accessible paths of travel necessary to assure wheelchair access to the sidewalks in compliance with the Americans with Disabilities Act, as well as maintain minimum safe access along public sidewalks for all.

Summary of Proposed Urgency Ordinance No. 4351, Ordinance No. 4349, and Resolution No. 2024-155

The full text for the proposed Urgency Ordinance No. 4351, Ordinance No. 4349, and Resolution No. 2024-155 are provided as Attachments 1-3 respectively.

Licenses and Permits

Every Sidewalk Vendor who engages in the selling of food or merchandise shall obtain the following:

- City Business license.
- Sidewalk Vending Permit for vending equipment associated with vending operations (i.e. pushcarts, pedal-driven carts, stands, displays, showcases, racks, and wagons, etc.).
- Liability insurance.
- Los Angeles County Department of Public Health Food Handler Certificate and Permit for sidewalk vendors selling food.

A Sidewalk Vendor may apply for a maximum of two (2) separate permits.

Operational Regulations and Requirements

- A Stationary Sidewalk Vendor may not operate in an exclusively zoned residential area and may operate only in an authorized commercial or industrial zone.
- Stationary Sidewalk Vendors may only operate between the hours of 7:00 a.m. and 12:00 a.m. daily.

- Roaming Sidewalk Vendors may not operate in exclusively zoned residential areas between the hours of 8:00 p.m. and 8:00 a.m. daily.
- Sidewalk Vendor shall not operate on any sidewalk that is less than nine (9) feet wide.
- Sidewalk Vendor shall not operate on any sidewalk or space that does not provide for at least forty-eight (48) inches of a clear path of travel.
- Vending of services is prohibited.
- Vending location shall not block entrances to buildings, driveways, parking spaces or building windows.
- Prohibited within 15 feet of crosswalks, fire hydrants, bus stop and facilities, and driveway aprons.
- Sidewalk Vendor shall not discharge any liquid (e.g. water, grease, oil, etc.) onto or into the city streets, storm drains, tree well, catch basins, or sewer facilities.
- Sidewalk Vendor shall not use the walkway, sidewalk or public right-of-way to provide seating or tables for customers.
- Sidewalk Vendor shall not use portable generators, outdoor wood burning ovens, charcoal barbecues, gasoline, kerosene or propane or open flame.

Location Regulations

- Prohibited within 500 feet of any K-12 school from 6:00 a.m. through 6:00 p.m. on days that school is open to students.

Prohibiting sidewalk vending in proximity to schools would avoid impacts on classroom instruction and provide unobstructed flow of pedestrian traffic on sidewalks to comply with the Americans with Disabilities Act, and vehicular traffic on roadways. The restriction would safeguard public safety by minimizing the risk from dangerous situations, such as competing vendor, pedestrian, vehicular and bicycle traffic that occur during school hours.

- Prohibited at ballfields, grass turf, playground areas, public parks including paved or unpaved trails or paths, or in any other public space that is not a sidewalk.

Prohibiting sidewalk vending in public parks is necessary to ensure the public's use and enjoyment of recreational opportunities, and to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of the parks. Unpermitted vendors are currently operating in a manner that obstructs the narrow pedestrian paths within the parks or on landscaped areas, and on pavement adjacent to bleachers. This creates a safety hazard for the elderly, the very young, individuals with disabilities, and others who are less able to navigate through crowds and around obstacles or hazards.

- Prohibited within 200 feet of a farmers' market, swap meet, temporary event permit or special event permit during the limited operating hours of these events (including, but not limited to, construction related street or lane closures, street fairs, filming, and the Pomona Arts Colony during the hours of the 2nd Saturday Artwalk).

Prohibiting vending in these areas is necessary to protect public safety given the high pedestrian traffic and large crowds during the events. Vendors in conjunction with the high pedestrian traffic pose a threat to public safety when accessible path of travel is obstructed.

- Prohibited in the Mixed Use-Central Business District (MU-CBD) of the Downtown Specific Plan (bounded by W. First Street to the north, S. Gibbs Street to the east, W. Fourth Street to the south, and S. Parcels Street to the west).

Prohibiting vending in the MU-CBD is necessary to protect public safety given the high pedestrian traffic district, the relatively narrow width of the sidewalks, and large crowds, lines, and foot traffic drawn to the nightclubs and events. Vendors in conjunction with the high pedestrian traffic pose a threat to public safety when accessible path of travel is obstructed.

- Sidewalk Vending prohibited within 200 feet of the Fairplex every day of the Los Angeles County Fair.

Prohibiting vending near the Fairplex during the Los Angeles County Fair is necessary because the County Fair annually attracts over a million visitors to the City, and, given its scale, results in increased motor traffic and adverse impact to the residential communities surrounding the Fairplex, which would be aggravated by sidewalk vending.

Violations – Suspension or revocation

A Sidewalk Vendor Permit may be suspended or rescinded after four (4) or more violations 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;
3. Operating in a manner that creates a public nuisance or constitutes a danger to the public.

No person whose permit has been revoked shall be issued a permit for a period of two (2) years from the date revocation becomes final.

The Vendor may appeal the suspension or revocation to the City Manager within 10 days of the suspension/revocation. The City Manager shall appoint a hearing officer to hear the appeal and make a final determination on the matter. The decision of the hearing officer shall be final, and the applicant or permittee may seek judicial review of the hearing officer's decision in accordance with Code of Civil Procedure § 1094.8 or as otherwise permitted by law.

Violations – Administrative Fines

Permitted Sidewalk Vendors that violate the Sidewalk Vending Ordinance rules and regulations shall be subject to the following fines.

1. Administrative fine of \$100 for a first violation.
2. Administrative fine of \$200 for a second violation within one (1) year of the first violation.

3. Administrative fine of \$500 for each additional violation within one (1) year of the first violation.

Unpermitted Sidewalk Vendors vending without a permit shall be subject to the following fines:

1. Administrative fine of \$250 for a first violation.
2. Administrative fine of \$500 for a second violation within one (1) year of the first violation.
3. Administrative fine of \$1,000 for each additional violation within one (1) year of the first violation.

Pursuant to SB 946, failure to pay an administrative fine shall not be punishable as an infraction or misdemeanor. Additionally, any violation of the Ordinance shall not be punishable as an infraction or misdemeanor, and any person alleged to have violated any provisions of the Ordinance shall not be subject to arrest except when otherwise permitted under law.

Public Outreach Campaign

Should the Council adopt the Urgency Ordinance, Ordinance and Resolution amending the Sidewalk Vending Program and associated Rules and Regulations, staff will prepare all necessary forms, materials and related documents in accordance with the amended regulations.

Additionally, staff will utilize the next 30 days to conduct educational outreach via the City Website, social media and direct contact with interested and sidewalk vendors currently operating in the City to advise of the amended regulations. The educational outreach will include the following:

- Code Enforcement team will conduct street outreach for 30 days and provide vendors with educational materials including an invitation to the workshop.
- Sidewalk Vending Workshop in partnership with the Los Angeles County Health Department in November 2024. The workshop will inform the vendors of the City's Sidewalk Vending Program and how to obtain City and County Public Health licenses and permits. Translation will be provided.

Upon completion of sufficient outreach period, staff will begin taking appropriate corrective actions toward vendors who remain non-compliant with the Sidewalk Vending Program and associated Rules and Regulations.

Urgency Ordinance

As an urgent ordinance, the proposed Urgency Ordinance requires five (5) affirmative votes of the City Council pursuant to Section 510 of the City Charter. The Council declares an ordinance necessary for the immediate preservation of public peace, health, or safety, containing a declaration of the facts constituting the urgency, and passes it by a five-seventh (5/7) vote of those present.

Should the Council adopt the Urgency Ordinance, the ordinance will become effective immediately pursuant to Pomona City Charter Section 510 and to remain in effect until rescinded to provide City enforcement officials with a means to protect the public health, safety and welfare. By adopting the regulations, the City creates a regulatory mechanism to assure that sidewalk vending does not pose a 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 disposal, risks to children, and consumer protection.

Additionally, the City wishes to have these new regulations in place immediately to ensure the health, safety and welfare of the public during the upcoming holiday season in which causes increased amounts of traffic, affecting the safety of pedestrians and motorists, due to a high concentration of visitors during the holiday season.

Prepared by:
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ATTACHMENTS:

Attachment No. 1 – Urgency Ordinance No. 4351

Attachment No. 2 – Ordinance No. 4349

Attachment No. 3 – Resolution No. 2024-155 with Rules and Regulations

Attachment No. 4 – Resolution No. 2024-183