

ORDINANCE NO. XXXX

**AN ORDINANCE OF THE CITY OF POMONA, CALIFORNIA,
AMENDING ARTICLE X OF CHAPTER 30 OF THE POMONA CITY
CODE TO CREATE A SIDEWALK VENDING PROGRAM, AND
AMENDING SECTION 38-73 RELATING TO VENDING IN PARKS**

THE CITY COUNCIL OF THE CITY OF POMONA DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

A. In 2018, the California Legislature passed Senate Bill 946 (“SB 946”) which prohibits cities from banning sidewalk vending outright or from otherwise restricting sidewalk vendors in the public right-of-way and in public parks, except in accordance with California Government Code section 51038 and 51039;

B. The Pomona City Code currently prohibits sidewalk vending, and as the City Code is in conflict with state law, it is unenforceable;

C. The regulatory scheme authorized herein is consistent with SB 946 because it adopts restrictions expressly authorized by the statute or are otherwise based on objective health, safety, and welfare concerns posed by sidewalk vending, including ensuring paths of travel required by disability access laws and requiring sanitation measures in the interests of food safety and the public health;

D. Sidewalk vending has a relatively low barrier to entry, which encourages entrepreneurship and affords economic opportunity for people to support themselves and their families, which are among the City’s core values;

E. Regulating sidewalk vending is necessary to provide some consumer protection in the sale of food and merchandise to the public and to coordinate the diverse uses of the public right of way in the interests of the public’s health, safety, and welfare;

F. Requiring licenses and permits to vend on sidewalks and in parks benefits the health and safety because it increases vendor accountability by facilitating enforcement of the City’s rules and regulations and protects vendors permitted to vend in specified locations; a licensing program also facilitates lines of communication between the City and its vendors and better equips the City to ensure that vending does not adversely affect the public welfare;

G. In light of the foregoing, the City Council finds that regulation of sidewalk vending benefits the City as a whole as it leads to orderly commerce;

H. Therefore, the City Council hereby adopts this Ordinance pursuant to the authority granted under SB 946.

SECTION 2. Chapter 30, Article X of the Pomona City Code (“Foot and Pushcart Vendors”) is hereby amended in its entirety to read as follows:

ARTICLE X. – SIDEWALK VENDING

Sec. 30-671. - Definitions.

For purposes of this article, the following definitions shall apply unless the context clearly requires a different meaning:

Cart means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending.

Cart owner means a person who owns or controls the operations of one or more carts and includes a self-employed, independent sidewalk vendor.

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, or any successor chapter.

Citation means an Administrative Citation issued pursuant to section 2.1184 of Article X, Chapter 2 of this code.

City means the City of Pomona.

City Manager means the City Manager or his or her designee.

County means the County of Los Angeles.

Food means any type of edible substance or beverage.

Merchandise means any good that is not food or an item for rent.

Park means any public park or recreational facility, including the Pomona City Civic Plaza, under the jurisdiction of the City Parks and Recreation Commission.

Pedestrian path means any paved path or walkway owned or controlled by the City and intended specifically for pedestrian travel.

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

Rules and Regulations means detailed requirements respecting sidewalk vending designed to supplement this Article.

Sidewalk means a public sidewalk as defined in Sec. 1-2 of this code.

Sidewalk vendor or *vendor* means a person who sells or offers for sale food or merchandise from a cart or from one's person, upon a public sidewalk or other pedestrian path.

Sidewalk vending means commercial activity that qualifies a person as a sidewalk vendor.

Stationary sidewalk vendor means a sidewalk vendor who operates from a fixed location.

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, or any successor article.

Temporary event permit means a permit issued by the City for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or a permit for gatherings in public parks issued under Sec. 38-76, for purposes including, but not limited to, filming, parades, or outdoor concerts.

Sec. 30-672. – Rules and Regulations

Rules and Regulations to implement the Sidewalk Vending Program will be developed and recommended by the City Manager and adopted by the City Council through resolution. The City shall post the Rules and Regulations on its website.

Sec. 30-673. – License and Permit Requirements

(a) Business Licenses.

- (1) No cart owner may engage in sidewalk vending or engage vendors to operate a cart within the City without first obtaining a license from the Finance Department.
- (2) Applicants for a sidewalk vending business license shall submit the information and complete the process set forth in the Rules and Regulations.
- (3) A license shall be valid for one (1) year after the date of issuance, unless it is revoked prior to that date.
- (4) No license is transferable. Any change in ownership or operation of a cart requires a new permit under this article.
- (5) Licenses must be renewed prior to expiration according to procedures established by the Finance Director. Unless timely renewed, any license shall become null and void at the end of its term.
- (6) Applicants must pay an application or renewal fee as established by the Rules and Regulations.

(b) Vendor Permits.

- (1) No vendor may engage in sidewalk vending without first obtaining a permit from the Finance Department.
- (2) Applicants for a vendor permit shall complete the process set forth in the Rules and Regulations.

- (3) Permits shall be valid for one (1) year after the date of issuance, unless it is revoked prior to that date, and must be renewed prior to expiration.

Sec. 30-674. – Restricted Vending Locations

Vending may be restricted or prohibited in specified limited areas of the City based on objective health, safety, and welfare concerns, or to ensure the public's use and enjoyment of City parks. These restrictions or prohibitions shall be detailed in the Rules and Regulations and adopted by the City Council through resolution.

Sec. 30-675. – Operating Requirements

At all times, a sidewalk vendor must operate in compliance with the Rules and Regulations.

Sec. 30-676. – Application Review; Grounds for Denial

(a) The Finance Director may deny an application for a sidewalk vending license or permit if he or she makes any of the following findings:

- (1) Applicant's proposed vending operations violate the requirements of this article or the Rules and Regulations.
- (2) The applicant has made one or more material misstatements in the application.
- (3) The applicant has failed to submit a substantially complete application.
- (4) The applicant has had a sidewalk vending license revoked within the preceding twelve (12) months, beginning January 1, 2019.

(b) If an application is denied, the reasons for denial shall be noted on the application and the applicant shall be notified that no license or permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form.

Sec. 30-677. – License or Permit Revocation

(a) A license may be revoked for the licensee's fourth or subsequent violation of this article or the Rules and Regulations, or for any serious violations of the law, including, but not limited to the following:

- (1) Fraud or misrepresentation in the course of vending;
- (2) Fraud or misrepresentation in the application for a license or permit;
- (3) Vending in a manner that creates a public nuisance or constitutes a danger to the public;

- (4) Engaging in criminal activity in the course of sidewalk vending.
- (b) Notice of a revocation shall be mailed to the named licensee or permittee.

Sec. 30-678. – Exemptions

- (a) A sidewalk vending license or 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 temporary or special event permit including but not limited to a Certified Farmers' Market, Swap Meet, street fairs, outdoor concerts, sport league opening day, and business sidewalk sales

Sec. 30-679. – Appeals

Decisions to deny an application for a license or permit or to revoke a license or permit may be appealed by the applicant or licensee in accordance with the procedures for administrative hearings contained in Pomona City Code section 2-1188.

Sec. 30-680. – Penalties

- (a) A violation of this article or of the Rules and Regulations shall not prosecuted as an infraction or a misdemeanor and no person will be subject to arrest for violating this article except when otherwise permitted under law.
- (b) A violation of this article or of the Rules and Regulations may only be punished by an administrative citation subject to the following schedule of fines”
 - (1) \$100 for a first violation.
 - (2) \$200 for a second violation within one (1) year of the first violation.
 - (3) \$500 for the third violation and every subsequent violation within one (1) year of the first violation.
 - (4) A vending license or permit may be revoked for the remainder of its term upon the fourth or subsequent violation.
- (c) Notwithstanding any other provisions of this code, failure to pay an administrative fine assessed under this section shall not be punishable as an infraction or a misdemeanor.

- (d) Additional fines, fees, assessments, or any other financial conditions beyond those authorized by this section shall not be assessed.
- (e) When assessing an administrative fine pursuant to this article, the adjudicator shall take into consideration a vendor's ability to pay the fine.
 - (1) The City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall provide instructions or other materials for requesting an ability-to-pay determination.
 - (2) A person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.
 - (3) If a person meets the criteria described in subdivision (a) or (b) of Government Code section 68632 (respecting the receipt of specified public benefits and monthly income relative to current poverty guidelines, respectively) the City shall accept twenty (20) percent of the amount imposed under subsection (a) of this section as full satisfaction thereof.
 - (4) The City may also allow the person to complete community service in lieu of paying the total administrative fine, waive the fine, or offer an alternative disposition.

SECTION 3. **Section 38-73, subsection (7)** of Chapter 38, Article III of the Pomona City Code is hereby repealed and the following subsections renumbered in sequence.

SECTION 4. CEQA. The City Council has determined that the proposed ordinance establishing a licensing program for sidewalk vending is not subject to environmental review under the California Environmental Quality Act ("CEQA"). Requiring a business license and a permit for ambulatory vending activities otherwise permitted under state law will not have a significant effect on the environment. Therefore, under section 15378 of Title 14 of the California Code of Regulations ("the CEQA Guidelines"), the proposed ordinance is not a "project" subject to CEQA.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

SECTION 6. The City Clerk shall attest to the passage and adoption of this ordinance, causing it to be posted as required by law, and it shall become effective thirty (30) days after its adoption.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2019.

Tim Sandoval
Mayor

ATTEST:

Rosalia A. Butler, MMC
City Clerk

APPROVED AS TO FORM:

Interim City Attorney

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, ROSALIA A. BUTLER, City Clerk of the City of Pomona do hereby certify that the foregoing Ordinance was introduced for first reading on **MONTH DAY**, 2019, and adopted at a regular meeting of the City Council of the City of Pomona held on MONTH DAY, 2019 by the following vote:

AYES:
NOES:
ABSENT:

ABSTAIN:

Rosalia A. Butler, MMC
City Clerk

DRAFT