



DATE: June 18, 2024

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Sidewalk Vendor Ordinance: Introduce an Ordinance Amending Chapter 6, Article 16 of the Hayward Municipal Code Regarding the Regulation and Enforcement of Sidewalk Vendors by Amending Sections 6-16.70 and 6-16.80 and adding 6-16.90.

RECOMMENDATION

That the City Council introduces an Ordinance (Attachment II) amending Chapter 6, Article 16 of the Hayward Municipal Code regulating the enforcement of Sidewalk Vendors, by amending Sections 6-16.70 and 6-16.80 and adding 6-16.90.

SUMMARY

On October 17, 2023, the City Council adopted an ordinance to amend the Hayward Municipal Code (HMC) to align the HMC with SB 946 (“Safe Sidewalk Vending Act”) and allow sidewalk vending activities in the City. A component of the ordinance was the creation of Chapter 6, Article 16 “Sidewalk Vendors” in the HMC. The new chapter established a regulatory framework for all sidewalk vendors operating within the public right-of-way in order to maintain public health, safety, and general welfare. Part of the regulatory framework included the establishment of a permitting program for sidewalk vending activities, known as the Sidewalk Vending Permit. The ordinance went into effect November 17, 2023.

The current enforcement procedure in Section 6-16.70 of the HMC¹ is an alternative procedure to the administrative citation procedure set forth in Section 1-3.07² of the HMC. The current enforcement procedure of the sidewalk vending ordinance allows the City to take a more inclusive and collaborative approach with the sidewalk vendor that focuses on education and awareness of City regulations. However, the current procedure does not have a mechanism to address sidewalk vending activities that pose an imminent health and safety risk to the public. The existing public nuisance regulations of the HMC do not provide sufficient tools to address nuisances created by sidewalk vendors. To address that issue, staff is proposing an update to the enforcement portion of the Sidewalk Vendor Ordinance to give

¹https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH6BUPRTR_ART16SIVE_S6-16.70EN

²https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH1GEPR_ART3PE_S1-3.07ADCIPR

the City the authority to impound food and equipment if the vendors are unlicensed, which may pose a risk to the public health and safety.

BACKGROUND

Senate Bill (SB) 946 was signed into law on September 17, 2018, by former Governor Jerry Brown. Effective January 1, 2019, SB 946 decriminalized sidewalk vending statewide and limits local jurisdictions' authority to regulate sidewalk vending. Further, SB 946 preempts any contrary local regulations, requiring any local regulation of sidewalk vending be consistent with SB 946. On Tuesday, October 17, 2023, the City Council adopted the Sidewalk Vendor Ordinance³, which became effective on November 17, 2023.

Since the effective date of the Sidewalk Vendor Ordinance, staff has engaged in various efforts to educate the public about the sidewalk vending regulations and activities and to help new vendors navigate the permitting process. Since January 2024, the City's Planning Division, in collaboration with Code Enforcement staff, has held monthly Sidewalk Vending Permit community workshops at the Downtown Library with the purpose of educating vendors on the City's recently adopted guidelines, explain the application submittal checklist, respond to general questions about permitting and enforcement, and provide one-on-one assistance to help vendors apply for the Sidewalk Vending Permit through the City's e-Permits portal. The workshops and all handout materials are provided in both English and Spanish, with an option for other translation services provided upon request. In addition to City staff, staff from Alameda County Department of Environmental Health (ACDEH) also attended these workshops and provided information on the County's Mobile Food Facility (MFF) permitting process and highlight upcoming ACDEH workshops, which are also held monthly at County offices.

To date, the City's Code Enforcement Division has taken an "education-first" approach, as outlined in the Sidewalk Vendor Ordinance, which is tied to their enforcement activities. After participating in the monthly workshops, Code Enforcement staff has followed up with in-person education and verbal warnings to active vendors to promote compliance. However, despite these efforts, unpermitted sidewalk vending has continued throughout the City which has created additional public health and safety issues. Code Enforcement staff has responded to 85 unpermitted sidewalk vendor incidents throughout Hayward since the Ordinance went into effect in February 2024. In fact, two primary corridors have been identified as repeat hotspot locations for vending activity: along Winton Avenue and along Tennyson Road.

DISCUSSION

Current Enforcement Procedure: As summarized above, Section 6-16.70 of the HMC outlines the enforcement procedures tied to the Sidewalk Vendor Ordinance. It is an alternative procedure to that of the administrative citation procedure set forth in Section 1-3.07⁴ of the

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⁴https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH1GEPR_ART3PE_S1-3.07ADCIPR

Hayward Municipal Code. The current enforcement procedure is consistent with the maximum fine amounts outlined in SB946 as described below:

- For the first incident, a verbal warning be given along with educational materials to the vendor which outlines the sidewalk vending regulations and permit process.
- For the second incident, a written warning was issued, which specifies the regulation being violated along with educational materials and includes a timeline for compliance.
- For the third incident, the following administrative citation procedures would apply:

If a vendor violates local regulations, other than operating without a permit, the following maximum fine amounts apply:

First Violation	Administrative Fine of \$100
Second Violation Within One Year of First	Administrative Fine of \$200
Each Additional Violation Within One Year of the First	Administrative Fine of \$500

If a sidewalk vending permit is required and the vendor is operating without a permit, the following fine amounts would apply:

First Violation	Administrative Fine of \$250
Second Violation Within One Year of First	Administrative Fine of \$500
Each Additional Violation Within One Year of the First	Administrative Fine of \$1,000

If selling food, the vendor is also required to obtain a Mobile Food Facility Permit issued by ACDEH. Once a complaint is filed alleging the vendor is potentially violating provisions of the California Health and Safety Code, an ACDEH Inspector will investigate and if a violation is verified, will prepare a Notice of Violation. ACDEH generally responds within a week, depending on staffing and other circumstances, such as the number of inspectors required to be effective, if translation services are needed, if coordination with other agencies is required, or if overtime for staff is needed.

For a first violation, the Notice of Violation is sent that informs the vendor that they're in violation of the state Health and Safety Code, cites the specific regulation that they're violating, and provides outreach documents that contain instructions on how to become compliant. For a second violation, an Inspector from the Department of Environment Health will contact the vendor again to highlight the violation as well as provide the necessary documentation to be compliant with health and safety codes. In some instances, the cart/pushcart will be impounded by ACDEH. ACDEH issues immediate Cease and Desist Notices for unpermitted vending activity in violation of County Health Regulations in addition to the Notice of Violation. The Cease and Desist Notices require immediate compliance. While inspectors do not have arrest powers to physically remove vendors from site, they typically remain on site with support from law enforcement, if available, until the vendor has vacated.

Draft Amendments: While City staff has engaged the community by focusing outreach efforts on education and the permit process, sidewalk vendors have continued to operate unpermitted throughout the City. To address potential public health and safety concerns associated with these activities, staff is proposing to amend Section 6, Article 16 of the

Municipal Code (Sidewalk Vending Ordinance) to include the option to impound items, food, and equipment, which may serve as a deterrent for vendors operating without the necessary permits and provide the City with an additional enforcement mechanism. Staff opines that with the added impoundment authority, the enforcement abilities to address public health, safety, and welfare concerns under the Ordinance will be strengthened while still continuing to create a pathway for vendors to legally operate in the City, thus supporting new business growth and entrepreneurship.

An overview of the proposed text amendments is outlined below and proposes to update the HMC to accommodate the proposed Sidewalk Vendor Program.

- Amend Section 6-16.70 “Enforcement”. This proposed amendment would change the title of this section from “Enforcement” to “Penalties and Administrative Citations”. For clarity, the authority to enforce the provisions by verbal warning and administrative citations will be separate from the impoundment provisions of the Ordinance.

Add Section 6-16.80 “Impoundment”. This section is added to give the City the authority to impound “vending devices, food, goods, and/or merchandise” that “reasonably appear to be abandoned on public property”; “are displayed, offered, or made available for rent or sale by a sidewalk vendor who (A) operates in violation of the Sidewalk Vendor Ordinance and (B) refuses to remove their vending device, food for sale and/or goods/merchandise for sale after being instructed to do so” by a Code Enforcement Officer; “are displayed, offered, or made available for rent or sale by a sidewalk vendor who (A) does not possess a valid applicable Sidewalk Vending Permit; and (B) also refuses to remove their vending device, food for sale, and/or goods/merchandise for sale after being instructed to do so by a” Code Enforcement Officer; or is “(A) creating an imminent and substantial safety or environmental hazard by the location of the vending device or the nature of the goods being offered for sale, and (B) refuses to remove their vending device, food for sale, and/or goods/merchandise for sale after being instructed to do so” by a Code Enforcement Officer. Under the proposed amendment, the City may immediately dispose of impounded materials that are perishable or cannot be safely stored. The proposed amendment also gives the City Council the authority to establish an impound fee, creates an appeal process of the impoundment of a sidewalk vendors’ devices, materials, and equipment, and gives the City the authority to auction or dispose of unclaimed items.

- Add Section 6-16.90 “City Manager Authority”. Given that the former 6-16.80 “City Manager Authority” was replaced with the “Impoundment” provisions, a new section for “City Manager Authority” would be created.

Proposed Enforcement. Unless there is a particularly substantive danger associated with the sidewalk vendor’s conduct, it is staff’s intent to allow all sidewalk vendors violating the ordinance a verbal warning and receipt of educational materials in accordance with Section 6-16.70(a)(1) of the Ordinance. Upon observance of unpermitted vending activity, vendors would be required to provide the necessary personal identification. After the vendor provides a valid

personal identification, the vendor will be logged in the Code Enforcement case management system and immediately issued a citation with an order to vacate the location immediately. If a sidewalk vendor does not comply with the repeated warnings given pursuant to Sections 6-16.70(a)(1) and (a)(2) of the Ordinance, staff may begin issuing administrative citations in accordance with Section 6-16.70(a)(3) of the Ordinance. Following multiple violations of the proposed regulations, sidewalk vendors would be subject to additional fines as set forth in Section 6-16.70(a)(3) of the Ordinance.

If fines are not adequately addressing a particular violation, the vendor does not provide personal identification, the vendor fails to respond to orders to immediately vacate, or there is vending activity which constitutes an imminent and substantial safety or environmental hazard, the City may impound any vending equipment or goods that are contributing to this hazard pursuant to Section 6-16.80(a)(2). An example of a condition that is considered an imminent and substantial safety hazard include those that pose a fire risk. However, imminent and substantial safety or environmental hazards related to food is determined by ACDEH in accordance with California Health and Safety Code Section 11493.

The impoundment process entails the following:

- Code Enforcement will contact Hayward Police for immediate standby.
- The physical condition of all impounded goods shall be documented in an effort to ensure that goods are returned to owners in the same physical condition.
- Code Staff shall issue to the offending party a receipt for any property removed and impounded including contact information by which to retrieve goods.
- Staff will be required to place all items in an available abatement trailer and transport to secure chain of custody storage facility for limited term storage.

The sidewalk vendor would be required to pay the cost of impound and the cost of any storage and has the right to appeal the impoundment within 10 days. pursuant to Section 6-16.80(c) by requesting an administrative hearing before a hearing officer appointed by the City pursuant to Chapter 1, Article 7 of the HMC. If successful in their appeal, the vendor may have their property returned without paying an impound fee. If the appeal is unsuccessful or not filed, all items impounded will remain at a specialized storage facility and will be available to the owner upon payment of impound fees for 90 calendar days. If a vendor submits a claim for impounded items within the 90-day timeframe, then the items will be scheduled for pick up by Code Enforcement staff at the secure facility and made available to the property owner via scheduled appointment at City Hall. Any items unclaimed by 5 p.m. on the 90th calendar day will not be available for pick up and will be forfeited to the City. The City has the authority to auction or dispose of forfeited items after 5 p.m. on the 90th day.

Code Enforcement staff are working to identify the most appropriate location and service for chain-of-custody storage. Currently staff is in conversations with Safestore USA, who provides secure chain of custody services for a variety of law enforcement agencies in the San Francisco Bay Area and is located in San Leandro, California.

Environmental Review. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15060(c)(2), the City Council finds that this ordinance will not have a direct or reasonably foreseeable indirect physical change in the environment and, therefore, is not subject to CEQA. Additionally, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment per Section 15061(c). Additionally, pursuant to Section 15060(c)(3), the activity is not a “project” as defined in Section 15378 because it does not have the potential for resulting in physical change to the environment, directly or indirectly.

STRATEGIC ROADMAP

In January 2020, the City Council adopted six Strategic Priorities as part of its three-year Strategic Roadmap. The Strategic Roadmap was updated in June 2023. This agenda item supports the Strategic Priority of Grow the Economy. Specifically, this item relates to the implementation of the following:

Project E5: Final Sidewalk Vendor Ordinance and provide a training on how to apply for a business license.

ECONOMIC IMPACT

While the specific economic impact is unknown, as new businesses, sidewalk vendors will be required to obtain a business license and pay State and local taxes, akin to brick-and-mortar businesses.

FISCAL IMPACT

The proposed amendment gives the City Council the authority to establish an impoundment fee by resolution.

SUSTAINABILITY FEATURES

The draft ordinance amendments do not include any Sustainable Features.

PUBLIC CONTACT

The summary of the Ordinance was published in the Daily Review c/o Bay Area News Group/East Bay on Friday, June 7, 2024.

NEXT STEPS

If the Council introduces the attached ordinance this evening, a second reading and adoption will be brought back during a regular meeting scheduled on June 25, 2024. If approved, the proposed text amendments will be effective 30 days after adoption.

Prepared by: Rozalynne Thompson, Senior Planner

Recommended by: Sara Buizer, Development Services Director

Approved by:

A handwritten signature in blue ink, appearing to be 'DC' or similar initials, written in a cursive style.

Dustin Claussen, Interim City Manager