

ORDINANCE No. 24-_____

ORDINANCE OF THE COUNCIL OF THE CITY OF HAYWARD AMENDING CHAPTER 6, ARTICLE 16 OF THE HAYWARD MUNICIPAL CODE RELATED TO REGULATIONS FOR SIDEWALK VENDING BY AMENDING SECTIONS 6-16.70 AND 6-16.80 AND ADDING 6-16.90.

THE CITY COUNCIL OF HAYWARD DOES ENACT AS FOLLOWS:

Section 1. Chapter 6, Article 16, of the Hayward Municipal Code is hereby amended to read as follows:

ARTICLE 16 – SIDEWALK VENDORS

SEC. 6-16.70 ~~ENFORCEMENT~~ PENALTIES AND ADMINISTRATIVE CITATIONS.

(a) Persons found vending in violation of this Article are subject to the following enforcement procedure:

- (1) For the first incident, a verbal warning will be given along with materials outlining the rules and regulations for sidewalk vending and the application process;
- (2) For the second incident, a written warning will be issued specifying the provision of this Article that has been violated as well as materials outlining the rules and regulations for sidewalk vending and the application process;
- (3) For the third incident, persons found in violation of this Article shall be subject to the Administrative Citation procedures found in Chapter 1, Article 7. Administrative Citations, of the Hayward Municipal Code, subject to the fines below:

(a) Persons that violate local regulations, other than operating without a permit, are punishable by an administrative fine not to exceed:

- (1) One hundred dollars (\$100.00) for a first violation; or
- (2) Two hundred dollars (\$200.00) for a second violation within one year of the first violation; or
- (3) Five hundred dollars (\$500.00) for each additional violation within one year of the first violation.

(b) Persons vending without a sidewalk vending permit are punishable by an administrative fine not to exceed:

(1) Two hundred fifty dollars (\$250.00) for the first violation; or

(2) Five hundred dollars (\$500.00) for a second violation within one year of the first violation; or

(3) One thousand dollars (\$1,000.00) for each additional violation within one year of the first violation.

(c) All administrative citations will be accompanied by a notice advising the person of their right to request an ability-to-pay determination and the process for requesting an ability-to-pay determination.

(b) Appeals. The appeals process contained in Chapter 1, Article 7 shall apply to citations issued under this Article as well as requests for an ability-to-pay determination. An administrative fine imposed pursuant to this Article need not be paid as a pre-requisite to requesting an appeal hearing or a hearing to determine ability-to-pay an administrative fine.

SEC. 6-16.80 ~~CITY MANAGER AUTHORITY~~ IMPOUNDMENT.

~~The City Manager, or their Designee, shall have the authority to establish administrative policies and regulations that may be necessary to implement the provisions of this Article.~~

(a) The city may impound vending devices, food, goods, and/or merchandise that:

(1) Reasonably appear to be abandoned on public property; or

(2) Are displayed, offered, or made available for rent or sale by a sidewalk vendor who (A) operates in violation of this chapter 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 city enforcement official; or

(3) 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 city enforcement official; or

(4) 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 city enforcement official; or

(b) The city may immediately dispose of impounded materials that are perishable or cannot be safely stored.

(c) An aggrieved vendor may, within ten days, appeal the impoundment of their property by requesting an administrative hearing before a hearing officer appointed by the city pursuant to Chapter 1, Article 7 and if successful in their appeal, may have their property returned without paying an impound fee. The appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedure contained in Chapter 1, Article 7 in the Hayward Municipal Code. Any appeal fee paid by the sidewalk vendor shall be returned to the sidewalk vendor if they are successful on appeal.

(d) An individual may recover impounded materials upon paying applicable impound fees and demonstrating proper proof of ownership.

(e) The city council may by resolution adopt impound fees, which shall reflect the city's enforcement, investigation, storage, and impound costs.

(f) Any unclaimed items will be considered abandoned and forfeited to the city after ninety days following impoundment.

SEC. 6-16.90 CITY MANAGER AUTHORITY.

The City Manager, or their Designee, shall have the authority to establish administrative policies and regulations that may be necessary to implement the provisions of this Article.

Section 2. California Environmental Quality Act. 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.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of __, 2024, by Council Member _____,

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2024, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward