

ORDINANCE No. 23-_____

ORDINANCE OF THE COUNCIL OF THE CITY OF HAYWARD AMENDING THE HAYWARD MUNICIPAL CODE AND TRAFFIC CODE TO ESTABLISH REGULATIONS FOR SIDEWALK VENDING

THE CITY COUNCIL OF HAYWARD DOES ENACT AS FOLLOWS:

Section 1. Provisions. The City Council incorporates by reference the findings contained in Resolution No. 23-__ approving the Text Amendments to the Hayward Municipal Code.

Section 2. Chapter 3, Article 5 of the Hayward Municipal Code is hereby amended to read as follows:

SEC. 3-5.13 - USE OF SIDEWALKS FOR OUTDOOR DINING. ~~SALES, OR FOOD PREPARATION.~~

The City Manager is hereby authorized to grant the temporary use of any sidewalk for the purpose of outdoor dining, ~~sales, or food preparation~~ at such locations and under such conditions he or she deems appropriate. At a minimum, the City Manager shall require that applicants be subject to substantially the following requirements:

SEC. 3-5.14 - SIDEWALK VENDING.

~~A pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by a sidewalk vendor for vending activities may be placed on any sidewalk at locations in accordance with the provisions of Chapter 6, Article 16, of the Hayward Municipal Code.~~

Section 3. Chapter 4, Article 10 of the Hayward Municipal Code is hereby amended to read as follows:

SEC. 4-10.03 DEFINITIONS.

- a. 'Solicit, ask, or beg' shall include using the spoken, written, or printed word, or bodily gestures, signs, or other means, with the purpose of obtaining an immediate donation of money or other thing of value, or soliciting the sale of goods or services. This article does not apply ~~to sidewalk vending activities governed by Chapter 6, Article 16 or~~ peddling and soliciting activities governed by Chapter 8, Article 1 of this code.

Section 4. Chapter 6, Article 2 of the Hayward Municipal Code is hereby repealed
amended to read as follows:

~~SEC. 6-2.01 – HAND CART SALES PROHIBITED.~~

~~It shall be unlawful for any person to hawk, peddle, vend or sell any article, merchandise, edible foods of any kind, or any other thing of value from a hand cart or other vehicle moved by human power along or upon the streets of the City of Hayward.~~

Section 5. Chapter 6, Article 16, of the Hayward Municipal Code is hereby amended to read as follows:

ARTICLE 16 – SIDEWALK VENDORS

SEC. 6-16.10. TITLE.

This Article shall be known as the “Sidewalk Vendor Ordinance”.

SEC. 6-16.20. PURPOSE.

Article XI, §7 of the California Constitution confers local governments the authority to adopt ordinances and regulations designed to promote the public health, safety, and general welfare of their communities. The purpose of this Article is to protect against unsafe conditions and health, safety, or welfare concerns of the community that result from the operation of sidewalk vendors on public sidewalks or a pedestrian path, consistent with the provisions of Government Code §§ 51036 - 51039. The requirements set forth in this Article are intended to protect the public’s health, safety, and welfare by ensuring that vendors on public property provide safe and sanitary conditions for consumers and the general public, are adequately insured, and are properly permitted with the City and licensed with other agencies.

SEC. 6-16.30 DEFINITIONS.

For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

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

"Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal- driven cart, wagon, showcase, rack, or other non- motorized conveyance, or from one' s person, upon a public sidewalk or other pedestrian path.

"Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.

SEC. 6-16.40 PERMIT REQUIRED.

(a) Only sidewalk vendors with valid sidewalk vending permit issued by the City Manager, or his or her designee, may vend within the City's public right-of-way.

(b) Applications shall include information required by the City including, but not limited to the following:

(1) The name, phone number, and mailing address of the applicant;

(2) Description of the merchandise and/or food offered for sale;

(3) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal and any owners of the company, partnership, or corporation;

(4) Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor;

(5) The location(s) in the City where the stationary sidewalk vendor intends to operate;

(a) If the sidewalk vendor proposes to be a stationary sidewalk vendor, a description or site plan/map of the proposed location(s) where vending will take place; and

(b) Certification that the information is true to his or her knowledge and belief.

(6). A copy of a valid California Department of Tax and Fee Administration seller's permit, if applicable.

(7) A copy of a valid Mobile Food Facility Permit issued by the Alameda County Department of Environmental Health (ACDEH), if required.

(8) An agreement by the sidewalk vendor, in a form approved by the City Attorney, to indemnify and hold harmless the City, its officers, and employees, for any damage or injury arising from the sidewalk vending activities.

(9). Proof of a policy or policies of comprehensive general liability insurance, in an amount as approved by the City Attorney, against any injury, death, loss, or damage as a result of wrongful or negligent acts or omissions by the permittee, with an endorsement naming the City as an additional insured.

(10) Payment of a nonrefundable processing fee, if required, in an amount established by resolution of the City Council.

(c) All sidewalk vendors are required to have a business license pursuant to Chapter 8 (Finance, Revenue and Taxation), Article 1 (Business Licenses) of the Hayward Municipal Code.

(d) A sidewalk vending permit shall be valid for a period of one (1) year from the date of issuance and shall be renewed annually.

SEC. 6-16.50 OPERATIONAL REGULATIONS.

(a) It shall be unlawful for any person to operate as a sidewalk vendor or to engage in sidewalk vending activities in the City without first obtaining a sidewalk vending permit pursuant to section 6-16.60 of this Article.

(b) All sidewalk vendors must display their City-issued sidewalk vending permit and any other licenses issued by other agencies on the street-side portion of their pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance when operating in the public right-of-way.

(c) Sidewalk vending activities in residential zoning districts may occur only between the hours of 9:00 a.m. and 7:00 p.m.

(d) Sidewalk vending activities in nonresidential zones will be as restrictive as any limitations on hours of operation imposed on other businesses or uses on the same street, excluding those permitted to operate 24 hours.

(e) If applicable, sidewalk vendors shall obtain and maintain a valid Mobile Food Facility (MFF) permit from the Alameda County Department of Environmental Health (ACDEH) during all sidewalk vending activities in the City. Sidewalk vendors shall display the MFF permit during vending operations and shall be made available to the City as part of the permit application or renewal process.

(f) Each sidewalk vendor shall provide a trash receptacle for use by its customers and shall ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash so that public trash receptacles for use by the general public do not have to be used by customers.

(g) Sidewalk vendors shall not dispose of customer or sidewalk vendor's trash in trash receptacles for public use.

(h) All sidewalk vendors shall immediately clean up any food, grease, or other fluid or item related to their sidewalk vending activities that are spilled or discharged on public property. Disposal of trash, food, grease or other materials to any storm drain, creek, or waterway is prohibited. Vendors shall not dump, drain, or discard any fouled, spoiled, or unused product, which includes draining ice coolers, drink containers and/or miscellaneous containers on the ground.

(i) All sidewalk vendors are responsible for ensuring that the surrounding sidewalk is kept clean and free of trash and debris associated with their vending operation.

(j) No sidewalk vendor shall vend in a manner that blocks or obstructs the access required by Americans with Disabilities Act of 1990, access to designated loading zones, and access to public utilities. Sidewalk vendors must at all times provide a clearance of not less than four (4) feet on all sidewalks or pedestrian areas so as to enable persons to freely pass while walking, running, or using mobility assistance devices.

(k) A sidewalk vendor operating on any sidewalk or public right-of-way must ensure that no obstruction is placed impeding entry to and exit from a business or residence or access to a public facility.

(l) Sidewalk vending of the following is prohibited:

1. Alcoholic beverages;
2. Adult-oriented materials, as defined in Section 6-10.02 of the Hayward Municipal Code;
3. Tobacco, tobacco products, or electronic smoking devices;
4. Cannabis or cannabis products;
5. Weapons, including knives, guns, or explosive devices, as defined in Section 3-4.00 of the Hayward Municipal Code;
6. Items that are not for immediate sale;
7. Selling or offer to sell services, or engage in or offer to engage in any type of rental activity, including the rental of any goods or services;
8. Pharmaceuticals; and
9. Any other merchandise prohibited by federal, state, or local law from being vended.

(m) Sidewalk vendors shall comply with the noise standards provided in Chapter 4, Article 1 of the Hayward Municipal Code, as it is most currently in effect and as may be amended.

(n) Consistent with the Alameda County Department of Environmental Health limitations, no pushcart, stand, display, pedal- driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending shall contain or use propane, natural gas, batteries, or other explosive or hazardous materials. A sidewalk vendor may not use an open flame on or within any pushcart, stand, display, pedal- driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending.

(o) Freestanding signs and any electrical, flashing, wind powered, or animated signs are prohibited. Vending equipment may have signs attached to or painted on the vending equipment. Total sign area shall not exceed four square feet.

(p) Sidewalk vendors shall comply with all generally applicable federal, state, and local laws.

SEC. 6-16.60 LOCATION-SPECIFIC REGULATIONS.

(a) To protect pedestrian safety and accommodate public street access, including parking and traffic, sidewalk vending shall be prohibited:

- (1) On any public property that does not meet the definition of a sidewalk, including, but not limited to, any street, roadway median, pedestrian islands, or bicycle lanes;
- (2) City owned property including, but not limited to, parking structures and parking lots, unless otherwise authorized by the City;
- (3) In any area that constricts passageway for pedestrians or vehicles to less than minimum required or obstructs traffic signals or regulatory signs;
- (4) On any median strip or dividing section within public right-of-way areas;
- (5) Within 18 inches from the edge of a curb;
- (6) Within 15 feet from any fire hydrant, driveway or alleyway, or door/emergency exit;
- (7) Within 20 feet of any mid-block crosswalk or storm drain;
- (8) Within 25 feet of any bus stop, street corner, or street intersection;
- (9) Within 100 feet of any emergency facility (fire station, police station, hospital) or public or private school on days when school is in session;
- (10) Within 200 feet of any farmer's market or special event for the duration of the event;
- (11) Within 200 feet of any freeway entrance or exit;
- (12) Stationary sidewalk vendors shall not vend within 50 feet of another stationary sidewalk vendor;
- (13) Stationary sidewalk vendors shall not vend within a park if the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire;
- (14) Stationary vendors that have not signed an agreement for concessions shall not vend within 100 feet of a public park, unless otherwise permitted; and
- (15) Sidewalk vendors are prohibited from entering or encroaching onto private property while engaged in sidewalk vending activities.

SEC. 6-16. 70 ENFORCEMENT.

(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.

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 6. Chapter 8, Article 1 of the Hayward Municipal Code is hereby amended to read as follows:

SEC. 8-1.02 - CRIMINAL PROSECUTION. BUSINESS LICENSE.

The conviction and punishment of any person for transacting any trade, calling, profession or occupation without a license shall not excuse or exempt such person from

the payment of any license due or unpaid at the time of such conviction, and nothing herein shall prevent a criminal prosecution for any violation of the provisions of this Article. This section does not apply to sidewalk vending activities governed by Chapter 6, Article 16 of the Hayward Municipal Code.

SEC. 8-1.84 - PEDDLERS.

For the purposes of this Section, a Peddler is defined to be a person not having a fixed place of business in the City, who travels from place to place, or has a stand upon any ~~public street, alley or other public place~~, doorway of any room or building, or vacant lot or property, for the purpose of selling or offering to sell any goods, wares or merchandise in his possession. This Section does not apply to sidewalk vending activities governed by Chapter 6, Article 16 in the Hayward Municipal Code.

Section 7. Chapter 10, Article 1 of the Hayward Municipal Code is hereby amended to read as follows:

SEC. 10-1.2735 - SPECIAL STANDARDS AND CONDITIONS FOR CERTAIN USES.

(3) Definitions. This section shall apply to any mobile unit (as defined below) designed or used for the vending of food or food products from a fixed or stationary location on private property. This Section shall not apply to Catering Truck operations as defined in subsection (b) of this section or Sidewalk Vendors, as defined in Section 6-16.30(B) of the Hayward Municipal Code.

Section 8. Section 24 of Article 6 of the Hayward Traffic Code is hereby amended to read as follows:

SEC. 6.24 SELLING MERCHANDISE ON CITY PROPERTY.

b. Notwithstanding the prohibition of subsection (a), the City may issue a temporary permit for a period not to exceed seven (7) days that authorizes certain specified commercial activity upon a City street, municipal parking lot, or other off-street City property in conjunction with street fairs, parades, and other community events or in other special circumstances. Requests for a permit for such temporary activity shall be made in writing to the Director of Public Works at least two weeks in advance of the desired commencement of the temporary activity. The Director of Public Works, in consultation with the Chief of Police, shall deny the permit if the proposed activity would necessarily impair the public health, safety, or general welfare. If that determination is not made, the Director of Public Works, in consultation with the Chief of Police and Risk Manager shall have the authority to issue a permit upon such conditions as are considered appropriate by them to protect the public health, safety, and general welfare. Permits for vending on a city sidewalk shall be exclusively issued pursuant to the Sidewalk Vending Ordinance in Chapter 6, Article 16 of the Hayward Municipal Code.

Section 9. 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 10. 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 __, 2023, by Council Member _____,

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2023, 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