



CITY COUNCIL AGENDA REPORT



DEPARTMENT: Administration

MEETING DATE: January 15, 2019

PREPARED BY: Alice D. Atkins, CMC, City Clerk

AGENDA LOCATION: CC-4

TITLE: Amendment to Title 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) of the Monrovia Municipal Code to Create a Sidewalk Vending Program and Related Provisions; Adoption of Ordinance No. 2018-12

OBJECTIVE: To adopt Ordinance No. 2018-12

BACKGROUND: On December 18, 2018, the City Council introduced and waived further reading, and the City Attorney read by title only Ordinance No. 2018-12, by a 4-0 vote, with Councilmember Blackburn absent.

This ordinance amends Monrovia Municipal Code Title 5 to create a Sidewalk Vending Program in compliance with SB 946.

RECOMMENDATION: Staff continues to recommend approval of this ordinance.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to adopt Ordinance No. 2018-12.

CC-4

ORDINANCE NO. 2018-12

AN ORDINANCE OF THE CITY OF MONROVIA, CALIFORNIA AMENDING TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE MONROVIA MUNICIPAL CODE ADDING A NEW CHAPTER 5.98 TO CREATE A SIDEWALK VENDING PROGRAM, AMENDING RELATED PROVISIONS OF THE MONROVIA MUNICIPAL CODE, AND MAKING A DETERMINATION OF EXEMPTION UNDER CEQA

RECITALS

(i) Senate Bill ("SB") 946 was signed into law on September 17, 2018, and becomes effective January 1, 2019.

(ii) SB 946 limits the authority of cities and counties to regulate sidewalk vendors, except in accordance with California Government Code Sections 51038 and 51039.

(iii) The City Council finds that the establishment of a sidewalk vending program will benefit the City as a whole by facilitating entrepreneurship and providing economic opportunity for people to support themselves and their families, and by contributing to a diversity of food options and lively streets.

(iv) The City Council finds that the act of vending on sidewalks and other areas of the public right-of-way also creates the potential for increased safety hazards, such as, but not limited to, inhibiting the ability of disabled individuals and other pedestrians to follow a safe path of travel; interfering with the performance of police, firefighter, and emergency medical personnel services; encouraging pedestrians to cross mid-block or stand in roadways to purchase food; and creating obstacles and contributing to congestion for pedestrian, vehicle, and bicycle traffic.

(v) The City Council finds that restrictions on sidewalk vending are needed to accommodate vendors and their equipment, while also safe-guarding the flow of pedestrian movement on sidewalks and in the public right-of-way, and ensuring no interference with the performance of police, firefighter, and emergency medical personnel services.

(vi) The City Council finds that the regulation of vendors engaged in the sale of food and food products will help to ensure that sidewalk vendors obtain all necessary permits and comply with applicable sanitation, food preparation, and food handling laws, and thereby will protect the public health and safety against health problems such as food contamination, poor hygienic practices, and the threat of food poisoning.

(vii) The City Council finds that regulations related to the collection and disposal of trash or other debris generated by sidewalk vending are necessary to ensure that such trash or debris is not left, thrown, discarded, or deposited on City streets, sidewalks, pathways, gutters, or storm drains, or upon public or private lots, so that the same might be or become a pollutant.

(viii) The City Council finds that restrictions on sidewalk vending in public parks are necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities, and to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of these parks. In particular, the City Council finds that the unique wilderness nature of Monrovia Canyon Park and the Hillside Wilderness Preserve, located in

canyon and waterfall settings, and home to bears, snakes, mule deer, and other wildlife, is particularly sensitive to the impacts of commercial activity.

(ix) The City Council finds that restrictions on sidewalk vending in residential areas are necessary to ensure that such areas are protected from excessive noise and traffic impacts while allowing economic opportunities for sidewalk vendors.

(x) The City Council adopts this Ordinance under the authority provided in SB 946, and finds that the time, place, and manner regulations and requirements provided herein are directly related to the City's purpose of protecting of the health, safety, and welfare of its residents, businesses and visitors.

(xi) All legal prerequisites to the adoption of this Ordinance have occurred.

(xii) The City Council of the City of Monrovia hereby finds and determines that all of the above Recitals are true and correct and incorporates such Recitals into this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROVIA DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 5 (Business Taxes, Licenses and Regulations) of the Monrovia Municipal Code is hereby amended to add a new Chapter 5.98, which shall read as follows:

“Chapter 5.98 Sidewalk Vending

5.98.010 Definitions. The following words and phrases, whenever used in this chapter, shall mean as follows:

CERTIFIED FARMERS’ MARKET. Allocation operated in accordance with Chapter 10.5 of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter.

DIRECTOR. The Community Development Director of the City of Monrovia.

PERSON. One or more individuals, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs, or organizations composed of two or more individuals (or the manager, lessee, agent, servant, officer, or employee of any of them), whether engaged in business, nonprofit, or any other activity.

ROAMING SIDEWALK VENDOR. A sidewalk vendor who moves from place to place and stops only to complete a transaction.

SIDEWALK VENDOR. A person who sells from a vending cart or from one's person, upon a public sidewalk, parkway, pedestrian path, or other public right-of-way available to pedestrians.

“STATIONARY SIDEWALK VENDOR. A sidewalk vendor who sells from a fixed location.

SWAP MEET. A location operated in accordance with Article 6 of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

TEMPORARY SPECIAL PERMIT. A permit issued by the City for the temporary use of, or encroachment on, the sidewalk or any other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, city or privately sponsored filming, parades, or outdoor concerts.

SELL or SELLING. To sell, offer for sale, display for sale, or solicit offers to purchase, food, food products, beverages, goods, or merchandise.

VENDING CART. A pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for selling, whether mobile or stationary, that is not a vehicle as defined in the California Vehicle Code.

5.98.020 Permit Required. No person shall conduct or engage in sidewalk vending within the City without first obtaining a sidewalk vending permit pursuant to this chapter.

5.98.030 Permit Application. To apply for a sidewalk vending permit, a person must file an application with the Director or designee, accompanied by a nonrefundable processing fee in an amount established by resolution of the City Council. The application shall be in a form prescribed by the Director and shall contain, at a minimum, the following:

- A. The legal name and current address and telephone number of the applicant;
- B. If the applicant is an agent of an individual, company, partnership, corporation, or other entity, the name and business address of the principal;
- C. A description of the food or merchandise offered for sale;
- D. A description of the area(s) the applicant intends to operate;
- E. Whether the applicant intends to operate as a stationary sidewalk vendor and/or a roaming sidewalk vendor;
- F. A California seller's permit number pursuant to Section 6067 of the Revenue and Taxation Code;
- G. Certification by the applicant that the information contained in the application is true to his or her knowledge and belief;
- H. If a vendor of food or food products, certification of completion of a food handler course and proof of all required approvals from the Los Angeles County Department of Public Health;
- I. Proof of liability insurance; and
- J. Any other reasonable information regarding the time, place, and manner of the proposed vending.

5.98.040 Criteria for Approval or Denial of Permit. The Director, or his or her designee, shall approve the issuance of a permit unless he or she determines that:

- A. Information contained in the application, or supplemental information requested from the applicant, is false in any material detail;

- B. The applicant has failed to provide a complete application, after having been notified of the requirement to produce additional information or documents; or
- C. The applicant has failed to demonstrate an ability to conform to the operating standards set forth in section 5.98.090.
- D. The applicant has failed to pay any previous administrative fines, complete any community service, and/or complete any other alternative disposition associated with a previous violation of this chapter.

If the permit is denied, written notice of such denial and the reasons therefor shall be provided to the applicant.

5.98.050 Permit Expiration and Renewal. A sidewalk vending permit shall be valid for twelve (12) months from the date of issuance, and shall expire and become null and void on the anniversary of its issuance. A person may apply for a permit renewal on a form provided by the City prior to the expiration of his or her active sidewalk vending permit.

5.98.060 Permit Rescission. The Director may rescind a permit issued to a sidewalk vendor for a fourth violation or subsequent violation of this Chapter. A sidewalk vendor whose permit is rescinded may apply for a new sidewalk vending permit upon the expiration of the term of the rescinded permit.

5.98.070 Appeals. Any person aggrieved by the decision of the Director to issue, deny issuance, or rescind a sidewalk vending permit may appeal the decision to the City Council. The appeal shall be filed with the City Clerk within fourteen (14) days following the date of the Director's decision.

5.98.080 Permits Nontransferable. No permit granted pursuant to this chapter shall be transferable.

5.98.090 Operating Requirements. Sidewalk vendors shall comply with the following:

- A. No sidewalk vendor shall vend in the following locations:
 - 1. Within fifteen (15) feet of any street intersection;
 - 2. Within ten (10) feet of any fire hydrant, fire call box, or other emergency facility;
 - 3. Within ten (10) feet of any driveway or driveway apron;
 - 4. Upon or within any roadway, median strip, or dividing section;
 - 5. Upon or within any parkway or landscaped areas lacking paved pathways for travel;
 - 6. Within 500 feet of a permitted certified farmers' market, a swap meet, or an area designated for a temporary special permit. This prohibition shall be limited to the operating hours of the farmers' market or swap meet, or the limited duration of the temporary special permit;

7. Within 500 feet of a public or private school site during school hours, and not within one hour before or one hour after school drop off and pick up operations;
 8. Within Monrovia Canyon Park and Hillside Wilderness Preserve;
 9. In any City parking lot;
 10. On private property without the consent of the property owner.
- B. No sidewalk vendor shall sell in a manner that blocks or obstructs the free movement of pedestrians or vehicles. Sidewalk vendors must at all times provide a clearance of not less than three (3) feet on all sidewalks or pedestrian areas so as to enable persons to freely pass while walking, running, or using mobility assistance devices;
- C. Sidewalk vending is only permitted between the hours of 8:00 a.m. and 10:00 p.m., daily, except as follows:
1. In residential areas, sidewalk vending shall only be permitted between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and between the hours of 9:00 a.m. and 6:00 p.m. on weekends and holidays.
 2. In nonresidential areas, the limit on hours of operation shall not be more restrictive than the hours of operation of other businesses or uses on the same street.
 3. In park areas, sidewalk vending shall be permitted only during hours open to the public.
- D. Stationary sidewalk vendors shall not sell in areas that are zoned exclusively residential.
- E. Stationary sidewalk vendors shall not sell at any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire.
- F. Sidewalk vendors shall provide a trash receptacle for customers and ensure proper disposal of customer trash. Prior to leaving any vending location, the sidewalk vendor shall pick up, remove, and dispose of all trash generated by the vending operations or the vendor's customers within a fifteen (15) foot radius of the vending location.
- G. Vendors of food or food products shall possess and display in plain view on the vending cart a valid Public Health Permit from the Los Angeles County Department of Public Health.
- H. Sidewalk vendors shall possess at all times while selling, a valid sidewalk vendor permit issued pursuant to this chapter, as well as any other permit or license required by the City and any other appropriate governmental agency.
- I. Sidewalk vendors shall possess at all times while selling, current liability insurance.
- J. Sidewalk vendors shall comply with all applicable state and local laws, including without limitation state food preparation, handling, and labeling requirements; fire codes and

regulations; noise standards; and the Americans with Disabilities Act of 1990 and other disability access standards (both state and federal).

- K. Sidewalk vendors shall not operate on
- L. Vending carts shall not be chained, fastened, or affixed at any time to any building or structure, including, but not limited to lampposts, parking meters, traffic signals, fire hydrants, benches, bus shelters, trash cans, street signs, trees, or other objects within the public right-of-way. No vending cart shall become a permanent fixture on any site or be considered an improvement to real property.

5.98.100 Administrative Citations.

- A. A violation of this chapter by a sidewalk vendor who has a valid sidewalk vending permit from the City is punishable only by an administrative citation pursuant to Chapter 1.17 in amounts not to exceed the following:
 - 1. One hundred dollars (\$100) for a first violation.
 - 2. Two hundred dollars (\$200) for a second violation within one year of the first violation.
 - 3. Five hundred dollars (\$500) for each additional violation within one year of the first violation.
- B. A person engaged in sidewalk vending without a valid City sidewalk vending permit is punishable by an administrative citation pursuant to Chapter 1.17 in amounts not to exceed the following, in lieu of the amounts set forth in paragraph A:
 - 1. Two hundred fifty dollars (\$250) for a first violation.
 - 2. Five hundred dollars (\$500) for a second violation within one year of the first violation.
 - 3. One thousand dollars (\$1,000) for each additional violation within one year of the first violation.
 - 4. Upon proof of a valid sidewalk vending permit issued by the City, the administrative citations set forth in this paragraph shall be reduced to amounts set forth in paragraph A.
- C. A violation of this chapter shall not be punishable as an infraction or misdemeanor. No person alleged to have violated the provisions herein shall be subject to arrest except when otherwise permitted by law.
- D. Failure to pay an administrative citation issued pursuant to this section shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized herein shall not be assessed.
- E. When assessing administrative citations pursuant to this section, the hearing officer shall take into consideration the person's ability to pay the fine. The City shall provide the person

with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The 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.

- F. If the person meets the criteria described in subdivision (a) or (b) of Government Code Section 68632, the City shall accept, in full satisfaction, twenty (20) percent of an administrative citation imposed pursuant to this chapter.
- G. The hearing officer may allow a person to complete community service in lieu of paying the total administrative citation, may waive the administrative citation, or may offer an alternative disposition.”

SECTION 2. Section 5.04.030 (Definitions) of Chapter 5.04 (General Provisions) of Title 5 (Business Taxes, Licenses and Regulations) of the Monrovia Municipal Code is hereby amended to clarify that the definitions of the terms “Itinerant Vendor” and “Peddler” do not include sidewalk vendors, with all other definitions in Section 5.04.030 to remain unchanged, which shall read as follows:

“ITINERANT VENDOR. Any person, other than a sidewalk vendor operating with a valid permit issued in accordance with Chapter 5.98, who engages in a temporary or transient business in the city, selling goods or any other things of value, with the intention of engaging in such business in the city for a period of not more than 120 days, and who, for the purpose of engaging in such business, hires, leases, or occupies any room, building or other place for the exhibition or sale of goods or other things of value. If the place in which a business is conducted is hired, leased, or occupied 120 days or less, such fact shall be presumptive evidence that the business conducted therein is a temporary or transient business.”

“PEDDLER. Any person, other than a sidewalk vendor operating with a valid permit issued in accordance with Chapter 5.98, who goes from house to house, place to place, or in or along the streets within the city selling or making immediate delivery, or offering for sale and immediate delivery any goods, wares or merchandise or anything of value, in possession of the peddler, or offering to perform personal services to persons other than manufacturers, wholesalers, jobbers or retailers in such commodities.”

SECTION 3. Subsection (L) of Section 12.32.050 (Restrictions Applicable to City Parks and the Use of Park Facilities) of Chapter 12.32 (Parks) of Title 12 (Streets, Sidewalks and Public Places) of the Monrovia Municipal Code is hereby amended to provide that sidewalk vendors may operate in City Parks in accordance with Chapter 5.98, with all other provisions of Section 12.32.050 to remain the same, which shall read as follows:

“(L) Commercial and other related activities:

- (1) Posting or placing any bills, notices, papers or advertising devices of any kind;
- (2) Selling or offering for sale any merchandise, article or thing without a valid sidewalk vending permit issued in accordance with Chapter 5.98, or with the permission of the City Council;

(3) Practicing, carrying on, conducting or soliciting for any trade, occupation, business, or profession without a valid sidewalk vending permit issued in accordance with Chapter 5.98, or by express permission of the City Council;

(4) Selling, exchanging, giving, loaning or distributing any pressurized can containing any substance commonly known as paint or dye to anyone under the age of 18 years old;

(5) Possessing any pressurized can containing any substance commonly known as paint or dye while in any city park, playground, swimming pool, recreational facility, public highway, street, alley or any publicly owned place, whether inside a vehicle or not, except as authorized by the city. Such authorization includes authorization provided to city employees or employees of an individual or company under contract with the city;"

Section 4. Section 12.48.050 (Exemptions) of Chapter 12.48 (Encroachments) of Title 12 (Streets, Sidewalks and Public Places) of the Monrovia Municipal Code is hereby amended to add language clarifying that sidewalk vendors do not require encroachment permits, which shall read as follows:

"This chapter shall not apply to:

- (A) United States mail boxes;
- (B) Public utility poles and facilities pursuant to rights granted by city or state law;
- (C) Portable garbage and rubbish receptacles or refuse when conforming to and placed for collection in accordance with the provisions of this code; and
- (D) Sidewalk vendors operating in accordance with Chapter 5.98."

Section 5. CEQA Findings. This ordinance is considered a "project" pursuant to the California Environmental Quality Act (CEQA), the State CEQA Guidelines (14 CCR §15000 et. seq.) and the City's CEQA Guidelines. This project is considered exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3). The City Council finds and determines that it can be seen with certainty that there is no possibility that the adoption of this Ordinance to require sidewalk vending permits will have a significant effect on the environment. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

Section 6. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 7. Effective Date. The City Clerk shall certify to the passage of this Ordinance and shall cause this ordinance to be published and/or posted as required by law and said Ordinance shall become effective 30 days after its passage.

INTRODUCED this 18th day of December 18, 2018.

PASSED, APPROVED, AND ADOPTED this 15th day of January, 2019.

Tom Adams, Mayor
City of Monrovia

ATTEST:

APPROVED AS TO FORM:

Alice D. Atkins, CMC, City Clerk
City of Monrovia

Craig A. Steele, City Attorney
City of Monrovia