



City Council Staff Report

DATE: February 20, 2019

AGENDA ITEM NO: Consent Calendar
Agenda Item 3-G.

TO: Honorable Mayor and Members of the City Council
FROM: Natalie C. Karpeles, Deputy City Attorney
SUBJECT: Second Reading and Adoption: An ordinance regulating sidewalk vending in accordance with Government Code §§ 51036, *et seq.*

RECOMMENDATION:

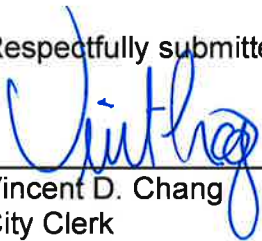
It is recommended that the City Council consider:

- (1) Waive the second reading and adopt the proposed ordinance; and
- (2) Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

On February 6, 2019, the City Council introduced and waived the first reading of an ordinance regulating sidewalk vending in accordance with Government Code §§ 51036, *et seq.*¹ Second reading and adoption of this ordinance is recommended; the ordinance will become effective 30 days after adoption.

Respectfully submitted:



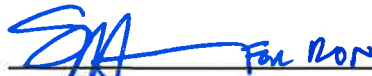
Vincent D. Chang
City Clerk

Prepared by:



Cindy H. Trang
Deputy City Clerk

Approved by:



Ron Bow
City Manager

Reviewed by:



Natalie C. Karpeles
Deputy City Attorney

¹ The staff report from the February 6, 2019 meeting is attached for reference.

ATTACHMENTS:

Attachment 1: Draft City Council Ordinance

Attachment 2: City Council Staff Report, dated February 6, 2019

ATTACHMENT 1
Draft City Council Ordinance

CITY OF MONTEREY PARK

ORDINANCE NO. XXXX

AN ORDINANCE REGULATING SIDEWALK VENDING IN ACCORDANCE WITH GOVERNMENT CODE §§ 51036, ET SEQ.

THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines as follows:

- A. Government Code §§ 51036, *et seq.* became effective on January 1, 2019 and acts to, among other things, decriminalize sidewalk vending.
- B. Amendments to the MPMC implemented by this Ordinance are necessary to create a Sidewalk Vending Program which will provide licensing regulations of street vendors in Monterey Park and limit penalties to a specified schedule of fines.

SECTION 2. *Factual Findings and Conclusions.* The City Council finds that the following facts exist and makes the following conclusions:

- A. Based upon documentary information and law enforcement reporting, many sidewalk vendors in the City engage in public nuisances including, without limitation: operating at or near parking lots and driveways (see California Manual on Uniform Traffic Control Devices and California Department of Transportation 2014 Highway Design Manual), in addition to urinating and defecating in public; vandalism; littering and unlawful depositing of refuse; and operating in a manner interfering with the normal flow of pedestrian and vehicle traffic (see compilation of offenses from 2008 to the present related to vendors, prepared by the Monterey Park Police Department, attached as "Exhibit A"). Additionally, the City has also received reports regarding sidewalk vendors violating public health regulations governing food service.
- B. Street food vending has become an important public health issue and a great concern due to widespread food borne diseases caused, in part, by food vendors who lack an adequate understanding of basic food safety and food-handling requirements. Major sources contributing to microbial contamination are the place of preparation, utensils for cooking and serving, raw materials, time and temperature of cooked foods and the personal hygiene of vendors (see Food & Drug Administration Employee Health & Personal Hygiene Handbook at <https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/IndustryandRegulatoryAssistanceandTrainingResources/UCM194575.pdf>. Accessed December 17, 2018.);
- C. Obesity, especially among children and adolescents, is a critical issue. A policy restricting the proliferation of unhealthy food sources near school campuses and promoting the sale of healthier food near schools may help address this epidemic locally (see David C. Sloane, et al., "A Step Toward a Healthier South Los Angeles: Improving Student Food Options Through Healthy Sidewalk Vendor Legalization." *Cityscape: A Journal of Policy Development and Research*, Volume 18, no. 1, 2016 U.S. Department of Housing and Urban Development, Office of Policy Development and Research, [Page 1 of 9](https://socialinnovation.usc.edu/social_research/a-step-toward-</div><div data-bbox=)

a-healthier-south-los-angeles-improving-student-food-options-through-healthy-street-vendor-legalization/. Accessed December 17, 2018); and

- D. There is a need to regulate the sale of food and merchandise in the public right-of-way to ensure that vendors prepare food safely, and according to the requirements of the Los Angeles County Department of Public Health; to prevent unsanitary conditions; to ensure trash and debris are removed by vendors; and to safeguard pedestrian movement on the sidewalk.

SECTION 3. MPMC Chapter 5.68 is amended in its entirety as follows:

“§ 5.68.010 Purpose.

This Chapter is adopted pursuant to the city’s police powers and Government Code §§ 51036 et seq., including any successor statutes, for the purpose of regulating the sale of food and merchandise in the public right-of-way.

§ 5.68.020 Definitions.

Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this Chapter. Words and phrases undefined in this Code have the same meaning as set forth in Sections 51036 and 51039 of the Government Code and Title 8 of the Public Health Code of Los Angeles County as amended by this code.

- A. “Certified Farmer’s Market” means a California agricultural product point-of-sale location that is registered under, and operated in accordance with, Food and Agriculture Code §§ 47000, *et seq.*
- B. “Charity” has the meaning in Business and Professions Code § 17510.2(d).
- C. “Director” means the city manager, or designee. Unless otherwise provided in writing by the city manager, the director is the Community and Economic Development Director.
- D. “Junk Food” means any food or beverage that is low in essential nutrients, protein, vitamins or minerals and high in calories, sodium, sugar and fat. Junk Foods include, without limitation, soda, candy, chips, ice cream, hot dogs or processed meat and chocolates.
- E. “Pedestrian Path” means a footpath, not adjacent to a road, which is intended for use only by pedestrians, tricycles, strollers or baby carriages.
- F. “Special Event” means any parade, athletic event, block party, or public assembly that requires partial or complete street or sidewalk closure to vehicular or pedestrian traffic and use of the street or sidewalk for the event, or any event for which a City-issued permit is required for the temporary use of, or encroachment on, the sidewalk or other public area.
- G. “Swap Meet” has the meaning in Business and Professions Code § 21661.

§ 5.68.030 Sidewalk Permit Requirement.

- A. Operating as a sidewalk vendor is prohibited without a valid permit issued in accordance with this Chapter. Persons must, in addition to obtaining a permit in this Chapter, comply with all other provisions of this Code.
- B. A bona fide charity is exempt from this chapter and is otherwise regulated pursuant to § 17510, *et seq.* of the Business and Professions Code.

§ 5.68.040 Applications.

- A. Sidewalk vendor permit applications must be made on a form approved by the Director and accompanied by all information requested on the application, including:
 - 1. The applicant's full, true name and California Driver's License, California Identification Card number, or individual taxpayer identification number;
 - 2. Proof of a valid California Department of Tax and Fee Administration seller's permit;
 - 3. The name, telephone number, current mailing address, and current photograph of the sidewalk vendor;
 - 4. The name and business address of the principal if the sidewalk vendor is an agent of an individual, company, partnership or corporation;
 - 5. A complete description of the food or merchandise offered for sale or exchange. Any applicant who intends to sell food must also provide proof of either a Food Handler Card or Certified Food Protection Manager certificate, where applicable, pursuant to Health and Safety Code §§ 113700-114437, and certify that the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used has been approved by the County Health Department for that particular type of food;
 - 6. The address of the location or proposed route where the sidewalk vendor is proposed to operate;
 - 7. Proof of liability insurance; and
 - 8. A complete description of any ancillary items that the applicant intends to use in conjunction with sales including, without limitation, small tables, trash receptacles, chairs, umbrellas and umbrella stands, or other similar items.
- B. Each application must be accompanied by an application fee, the amount of which will be set by City Council resolution. Such application fee is solely to reimburse the City for costs incurred as a result of processing a permit application.
- C. Completed applications must be submitted to the Director. Only complete applications will be considered. An application is complete if it includes

all required information together with full payment of the application fee. Applications will be considered in the order they are received. The Director may require supplemental information from any applicant before deeming an application complete. If supplemental information is requested, it must be provided to the Director within seven business days of the request.

- D. The Director may reject or deny any or all applications. The Director may request and obtain supplemental information from any applicant before making a decision on the application.
- E. Permittees must abide by the operational requirements set forth in this Chapter.
- F. Sidewalk vendors cannot be permitted as a permanent or proprietary location in any property within the City.
- G. The Director's decision with respect to a sidewalk vendor permit application may be appealed to the City Manager pursuant to this title. The City Manager's decision is the City's final decision.

§ 5.68.050 Operating Requirements.

- A. The sidewalk vending permit is valid for 12 months after being issued unless revoked or suspended, and may be renewed early, before expiration. Sidewalk vending permits are issued to persons, not pushcarts, wagons, or other nonmotorized conveyances. Sidewalk vending permits are nontransferable;
- B. Sidewalk vendors must maintain a clearance of not less than four feet (48-inches) upon every sidewalk or pedestrian path in order to comply with the Americans with Disabilities Act;
- C. Stationary sidewalk vendors must comply with Section 6.08.035 for purposes of solid waste;
- D. All applicable permits must be displayed in plain view at all times;
- E. No pushcart, stand, display, pedal-driven cart, wagon, showcase, rack or other nonmotorized conveyance, or ancillary vending items or equipment may be left unattended or chained or fastened to any pole, sign, tree or other object in the public right of way. Any pushcart, stand, display, pedal-driven cart, wagon, showcase, rack or other nonmotorized conveyance in violation of this subsection will be confiscated;
- F. Merchandise may not be placed directly onto the public right-of-way without a permit authorizing such placement;
- G. Sidewalk vendors may not offer junk food within 300 feet of any kindergarten, elementary school, junior high school, or senior high school between the hours of 6:00 am and 6:00 pm;
- H. Sidewalk vendors may not operate within 500 feet of a certified farmer's market, swap meet, or area designated for a City Council approved special event, during their limited duration. The City Council may also

designate which types of vendors, peddlers, sellers or solicitors will be allowed to participate in these special events;

- I. Sidewalk vendors may not offer services or any illegal or counterfeit merchandise;
- J. Stationary sidewalk vendors may not operate in any of the City's residential zones;
- K. Stationary sidewalk vendors may not operate within Garvey Ranch Park, La Loma Park, or any other city-owned park with an operative agreement between the city and a concessionaire for the exclusive sale of food or merchandise by the concessionaire;
- L. Any stationary sidewalk vendor that stores, prepares, packages, serves, vends, or otherwise provides food must be operated within 200 feet of an approved and readily available toilet and handwashing facility whenever the stationary sidewalk vendor is stopped to conduct business for more than a one-hour period, per Health and Safety Code § 114315. If the stationary sidewalk vendor is relying on a private restroom facility, the vendor must provide evidence that the owner of the private restroom and the property owner granted permission to the vendor, the vendor's patrons, and employees to use the private restroom;
- M. Sidewalk vendors may not operate vending tricycles, icicle trikes, bicycle vending carts or the like, in any City park; and
- N. Sidewalk vendors may not operate:
 - 1. Within 15 feet of an intersection;
 - 2. Within 10 feet of a driveway;
 - 3. Within 5 feet of any alleyway;
 - 4. Within 5 feet of any fire hydrant, fire call box or other emergency facility;
 - 5. Within a marked bus zone;
 - 6. Within 18 inches from the edge of the curb;
 - 7. Where placement impedes the flow of pedestrian traffic by reducing the clear space to less than 6 feet, or impedes egress from, access to or the use of abutting property; or
 - 8. Within 25 feet of the entrance or exit to any building.

§ 5.68.060 Revocation or Suspension of Permit.

- A. Whenever any person fails to comply with any provision of this Chapter or other applicable law, the Director may give written 10 days' notice to the address stated on a permittee's application specifying the time and place of a permit revocation hearing. If permit violations are shown by substantial evidence, the Director

may revoke or suspend any permit. The Director will not issue a new permit after the revocation of a permit unless the Director is satisfied that the applicant will thereafter comply with all provisions of this Chapter and the rules and regulations adopted thereunder and all other applicable provisions of law, and until the Director collects a fee in an amount sufficient to recover the actual costs of processing the re-application.

- B. The Director will provide the permittee with written notice of the revocation by certified mail addressed to the permittee's address.

§ 5.68.070 Violations and Penalties.

- A. Any violation of this chapter constitutes a public nuisance and each day such condition continues is a new and separate offense. Violations of this Chapter are subject to administrative penalties administered pursuant to Chapter 4.20.
- B. Any person engaged in sidewalk vending, solicitation or peddling must prominently display all permits required by this Chapter.
- C. Fines imposed by this chapter will be as follows:
 - 1. An administrative fine of \$100 for a first violation;
 - 2. An administrative fine of \$200 for a second violation within one year of the first violation; and
 - 3. An administrative fine of \$500 for a third or subsequent violation within one years of the first violation. Alternatively, the Director may revoke the permit issued upon a fourth or subsequent violation.
- D. When assessing an administrative fine, the Director must take into consideration the violator's ability to pay the fine. In doing so, the Director may allow the violator to complete community service in lieu of paying the total administrative fine, waive the fine, or offer an alternative disposition. If either of the following are true, the violator may remit to the City 20% of the administrative fine imposed:
 - 1. The violator is receiving public benefits under one or more of the following programs: (i) Supplemental Security Income (SSI) and State Supplementary Payment (SSP); (ii) California Work Opportunity and Responsibility to Kids Act (CalWORKs) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program; (iii) Supplemental Nutrition Assistance Program or the California Food Assistance Program; (iv) County Relief, General Relief (GR), or General Assistance (GA); (v) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants; (vi) In-Home Supportive Services (IHSS); or (vii) Medi-Cal; or
 - 2. The violator's monthly income is 125 percent or less of the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

- E. Any fine required to be paid under the provisions of this chapter is a debt owed by the vendor to the City. Any person owing money to the City is liable to an action brought in the name of the City for the recovery of such amount.”

SECTION 4. The definition of “Business by vehicle” in MPMC § 5.12.030 is amended as follows:

“Business by vehicle” is the business of running, driving, or operating any automobile, automobile truck, automobile tank wagon or any vehicle used for transportation, selling, collection or delivery of goods or other personal property of any kind from a vehicle, either as a principal business, or in connection with any other business; of soliciting for work, labor, or services to be performed upon the public street, in or from a vehicle, or to be performed on goods or other personal property.

The term applies to the delivery of goods purchased by retail merchants in the city at wholesale prices and delivered to said merchants in said city for resale by them for use or consumption by the public, and applies to the delivery of services to the businesses and professions listed in this chapter, but shall not apply to persons operating such vehicles together with, and in conjunction with, a fixed place of business within the city, for which such business a license fee is paid under the other provisions of this title.

The provisions of this title are not to be construed as imposing a tax upon vehicles, but as a method of classification of businesses and distinguishing between those maintaining a fixed place of business in the conduct of which vehicles are used and those maintaining a business in the conduct of which vehicles are used but who do not have a fixed place of business in the city.”

SECTION 5. MPMC § 12.04.120 is amended to read as follows:

“Unless previously and expressly invited to enter onto the premises, it is unlawful for any person to enter onto private property that is posted with an unobstructed sign or placard open to public view which prohibits soliciting.”

SECTION 6. MPMC Chapters 9.15 and 9.81 are deleted in their entirety. MPMC §§12.04.110 (Selling) and 13.12.065 (No vending in the public rights-of-way) are deleted.

SECTION 7. MPMC §10.40.100 is amended as follows:

“10.48.100 Unlawful parking, vendors from motorized vehicles.

- A. Except as otherwise provided in this section, it is unlawful for persons to park any vehicle from which goods, wares, merchandise, fruits, vegetables or food stuffs are sold, displayed, solicited or offered for sale or bartered or exchanged, or eating car or vehicle, on any portion of any street within the city, except that such vehicles, may stand or park only at the request of a bona fide purchaser for a period of time not to exceed ten minutes at any one place. This section does not apply to persons delivering such articles upon order of, or by agreement with a customer from a store or other fixed place of business or distribution.
- B. Vending activities on private property associated with a retail or service business must:

1. Obtain a valid business license; and
2. If required, obtain and maintain a valid county health department permit.”

SECTION 8. *Environmental Assessment.* This ordinance is exempt from additional environmental review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, “CEQA”) and CEQA regulations (14 California Code of Regulations §§ 15000, *et seq.*) because it consists only of minor revisions and clarifications to existing regulations and specification of procedures related thereto. This ordinance, therefore, does not have the potential to cause significant effects on the environment. Consequently, it is exempt from CEQA review under 14 Cal. Code Regs. § 15061(b)(3).

SECTION 9. *Validity of Previous Code Sections.* If this entire Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal or amendment of the MPMC or other ordinance by this Ordinance will be rendered void and cause such previous MPMC provision or other the city ordinance to remain in full force and effect for all purposes.

SECTION 10. *Reliance on Record.* Each and every one of the findings and determinations in this Ordinance are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 11. *Limitations.* The City Council's analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the City Council's lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions. Somewhat related to this are limitations on the City's ability to solve what are in effect regional, state, and National problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.

SECTION 12. *Preservation.* Repeal or amendment of any previous MPMC section or ordinance does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 13. *Severability.* If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provision or application and, to this end, the provisions of this Ordinance are severable.

SECTION 14. The City Clerk, or her duly appointed deputy, is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Monterey Park's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 15. *Effective Date.* This Ordinance will become effective on the 31st day following its passage and adoption. Ordinance Number 2065 is repealed in its entirety.

ORDINANCE NO. XXXX WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MONTEREY PARK AT ITS REGULAR MEETING OF _____.

Peter Chan, Mayor

Attest:

Vincent D. Chang, City Clerk

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By: 

Natalie C. Karpeles, Deputy City Attorney