



City Council Report

915 I Street, 1st Floor
Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2019-01586

December 3, 2019

Public Hearing Item 22

Title: Ordinance Adding Chapters 5.86 and 5.90 to and Amending Chapter 5.88 and Various Sections of Chapter 12.72 of the Sacramento City Code Relating to Mobile Service Vehicles, Outdoor Vending, and Sidewalk Vending and Establishment of Fees to Administer Sidewalk Vending Program (Noticed 11/22/2019 & 11/27/2019; Passed for Publication 11/12/2019; Published 11/15/2019)

Location: Citywide

Recommendation: Conduct a public hearing and upon conclusion, 1) adopt an Ordinance adding chapter 5.86; amending chapter 5.88; adding chapter 5.90; and amending sections 12.72.020, 12.72.060, and 12.72.070 of the Sacramento City Code relating to mobile service vehicles, outdoor vending, and sidewalk vending; and 2) adopt a Resolution establishing fees to administer the sidewalk vending permit program.

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Presenter: Tessa St. John, Program Manager, (916) 808-4847, Department of Finance

Attachments:

- 1-Description/Analysis
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Description/Analysis

Issue Detail: On September 17, 2018, Governor Jerry Brown signed Senate Bill (SB) 946 legalizing and decriminalizing the sale of food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person on the public sidewalk or other pedestrian path, including within parks (sidewalk vending). Currently, Sacramento City Code chapter 5.88, among other things, restricts and prohibits selling food or merchandise on the public sidewalks, streets, alleys, and pedestrian access easements in the City (vending), except for designated places in the downtown area with a city-issued outdoor vending permit.

Under SB 946, a local authority may adopt a program to regulate sidewalk vending provided it complies with SB 946, as codified in Government Code section 51036 *et seq.*, and any additional regulation of sidewalk vending must directly relate to an objective health, safety, or welfare concern. Additionally, SB 946 creates two separate categories of sidewalk vending, namely, stationary and roaming vending. Persons who engage in stationary sidewalk vending may not operate from any other location than the one designated under the permit, except where otherwise allowed by the local authority. Persons who engage in roaming sidewalk vending may operate anywhere in the local authority's jurisdiction but may only stop to complete a sale.

While the law permits sidewalk vending in public parks, park authorities can limit sidewalk vending in parks if the limitations are directly related to objective safety, health and welfare concern; necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; or necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park. A local authority may also prohibit all stationary sidewalk vending in the local authority's parks where there is a signed agreement that exclusively permits the sale of food or merchandise by a specific concessionaire.

Lastly, SB 946 makes any violation of the proposed ordinance punishable only by an administrative fine, as specified (see Attachment 2 for fine amounts). The new law also allows a local authority to suspend or revoke a permit only upon the fourth or subsequent violation within the same year and requires a local authority to take into consideration the individual's ability-to-pay the fine, reducing the fine if the assessment warrants reduction. Attachment 2 provides a detailed summary of SB 946 and Attachment 3 is the bill in its entirety. Relevant portions from SB 946 include:

- Allows stationary and roaming vendors
- Allows vending of food and merchandise sales

- Allows for vending in public parks, except under certain conditions
- Prohibits a limitation on the overall number of permitted sidewalk vendors
- Allows for limiting hours of operation, only if not unduly restrictive
- Prohibits restrictions based on community animus or economic competition

In order to continue regulating these activities the City Code needs to be modified to be compliant with SB 946. Staff recommends Council establish an enforceable permit process that complies with SB 946 by adopting the attached ordinance. Details on the ordinance changes are included in Attachment 4.

Based on direction from the Law and Legislation Committee (Committee), staff removed the requirement of a California Department of Justice (DOJ) background check as part of the vendor application process. However, because vendors will be operating near schools, in parks, and in residential areas, the Committee did request an alternative criminal history check. The application process will include a local criminal history check whereby the Sacramento Police Department will review local records using an applicant's name, date of birth, and driver's license number and check the State's sex offender registry database. If this initial check returns ambiguous or relevant criminal history, the applicant will have the option to voluntarily submit to a fingerprinting background check if they wish to continue the permitting process. The City currently submits fingerprinting results to the DOJ and considers criminal history in the State of California but does not consider citizenship status or provide notification to federal agencies. The permitting process will contain no questions regarding an applicant's immigration status nor will staff respond to requests for information about an individual solely on the basis of alleged violations of federal immigration laws, as decreed in Resolution No. 2017-0158 (*Reaffirming the City of Sacramento's Status as a City of Sanctuary...*), Section 2. (5.)(7.).

Finally, the proposed ordinance amends the City's current enforcement scheme of criminal and civil penalties to administrative penalties for fines in amounts from \$100 to \$500 for each violation within one year, the fourth or subsequent violations could result in revocation of the permit. It is important to note that the City's Code Enforcement Officers have long been challenged with enforcement of outdoor vending. Code Enforcement Officers are required to obtain identification prior to issuing citations and vendors frequently do not have identification or refuse to provide it. In addition, citations are frequently left unpaid. State designated reduced citation fees and the inability to seize materials raises further concerns about the effectiveness of enforcement. Requiring a permit will enable staff to contact vendors if complaints arise and allows for the suspension or revocation of permits; however, most enforcement concerns revolve around unpermitted vendors. The proposed program requires the conspicuous display of City permits that will allow easy identification for Code Enforcement Officers and will allow consumers the opportunity to seek out only those vendors in compliance

with City code. The County of Sacramento faces similar struggles with enforcing vending regulations and staff continues to work closely with County staff and other jurisdictions to explore new and innovative ways to combat unpermitted street vending.

Staff will continue outreach to the community regarding changing requirements. Since discussions around outdoor vending began, staff has worked closely with local business improvement associations and organizers to reach the vending and business communities. As the proposed ordinance moves forward, staff will conduct outreach, including community meetings, to increase awareness and compliance with permit requirements, including partnering with the County of Sacramento Environmental Health Division to educate food vendors about health permit requirements.

Policy Considerations: Currently, there are ten permitted vendors in the Central Business District as permitted under City Code chapter 5.88. The City has a list of over 100 people interested in vending in this limited area and the Business Permits office receives calls on a weekly basis from people interested in obtaining a permit to vend food throughout the city. Under SB 946, vendors have begun to operate with only a Business Operations Tax Certificate.

Chapter 5.88 addressed all types of outdoor vending and created exceptions for certain outdoor vending activities including cart outdoor vendors and mobile service vehicles. To preserve and clarify the different activities regulated under chapter 5.88, the proposed Ordinance adds chapter 5.86 to continue the existing regulation of mobile service vehicles, adds chapter 5.90 to separate a permitting program for sidewalk vendors (formerly known as outdoor vendors), and retains the remaining regulations for outdoor vending which includes brick-n-mortars selling food or merchandise from displays, carts, or stands immediately outside of its physical establishment.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): This action is not a “project” subject to CEQA because it involves administrative matters and will not result in new physical development, direct changes to the physical environment, and any reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines § 15378(b)(5).)

Sustainability: Not Applicable.

Commission/Committee Action: Staff presented outdoor vending research findings and program options to the Committee on June 26, 2018. The Committee directed staff to return with an outdoor vending pilot program. However, while drafting the pilot program, the State of California passed SB 946. As a result, staff's recommendations were adjusted significantly, and the current proposal was presented to the Committee on July 23, 2019. The Committee forwarded the proposed ordinance to Council under the condition that staff was able to find a solution to conduct a criminal background check on vendors without fingerprinting and submitting data to the DOJ to avoid deterring potential permit applicants due to insecurity around immigration status. In addition, the Committee directed staff to make the following changes prior to presenting to Council: allowing for the use of electric bicycles, specific restrictions regarding operations around outdoor markets (e.g., Certified Farmers' Markets), and elimination of the language "The verifications by declaration under the penalty of perjury.." with regards to appeal statements.

Staff provided information regarding the changes to the Parks and Recreation Commission on November 7, 2019.

Rationale for Recommendation: Sidewalk vendors are vibrant additions to the community, providing innovative, economical business opportunities and expanded options for consumers. Under state law, these vendors can operate, but may be subject to a permitting process by the City. In order to require a permit and enforce regulations, the City must adopt an ordinance aligned with SB 946. Requiring vendors to go through a permitting process and requiring compliance with basic regulations will help ensure the health and safety of the community.

Staff has proposed fees to cover the estimated cost to review applications, perform administrative tasks, determine suitability of vending location, and determine approval of the permit. Additional fees are established to cover the cost of the Police Department staff conducting a criminal history check and for Youth Parks & Community Enrichment staff to review applications for park permits.

Financial Considerations: Permit fees established by the proposed resolution will offset the staff time necessary in the implementation of the program. To keep permit fees affordable, enforcement costs are not included and will be offset through citation fees. Staff will reevaluate the cost of the program periodically to determine any necessary fee adjustments.

Local Business Enterprise (LBE): Not Applicable.

Summary of Senate Bill 946 - Sidewalk Vendors

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

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

- The bill prohibits the local authority from regulating sidewalk vendors except in accordance with this bill.
- Applies to all sidewalk vendors, including food and merchandise vendors.
- Local authorities cannot require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, and welfare concerns.
- Perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

Public right-of-way:

- A local authority cannot restrict vending to a designated neighborhood or area, unless it is directly related to objective health, safety, and welfare concerns.
- A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental agency.
- A local authority may prohibit stationary sidewalk vendors in zoned exclusive residential areas but cannot prohibit roaming vendors.
- A local authority shall not restrict the overall number of permitted sidewalk vendors within the jurisdiction, unless related to objective health, safety, and welfare concerns.
- Local authority can adopt requirements regarding time, place, and manner of vending including, but not limited to, the following:
 - Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitation on the hours of sidewalk vendors shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street;
 - Requirements to maintain sanitary conditions;
 - Requirements to ensure compliance with the federal Americans with Disabilities Act of 1990 or other disability access standards;
 - Requirement of appropriate state or local permits/business licenses, including CA Dept of Tax Sellers Permit;
 - Require a sidewalk vendor to submit information on their operations including:
 - Name and mailing address,
 - Description of merchandise offered for sale or exchange,

- California seller's permit number, if any.
- Local authorities can prohibit sidewalk vendors in the immediate vicinity of a permitted certified farmers' market, a swap meet, or a designated temporary special event permit, but the restriction only stands during the special event.

Public Parks:

- Local authority shall not prohibit a vendor from selling food or merchandise in a park owned or operated by the local authority unless it conflicts with an agreement for concessions that exclusively permits sale by the concessionaire.
- Local authority can adopt requirements regarding time, place, and manner of vending in a park if the requirements are directly related to:
 - Objective health, safety, or welfare concerns;
 - Ensuring the public's use and enjoyment of natural resources/recreation;
 - Preventing an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

Allowed Penalties:

- Vending without a permit:
 - 1st violation – not to exceed \$250
 - 2nd violation – \$500
 - Each additional violation within a year of the first violation – \$1,000
 - Upon proof of a valid permit, the fines shall be reduced to the ones below for other violations.
- Other violations:
 - 1st violation – not to exceed \$100
 - 2nd violation – \$250
 - Each additional violation within a year – \$500
- Local authority can rescind a permit on the fourth or subsequent violations.
- When assessing a fine, an adjudicator shall consider the person's ability to pay:
 - If the person meets the determination, the local authority must accept 20% of the fine.
- Failure to pay shall not be punishable as an infraction or misdemeanor.
- Fines are limited to what's in the statute.

Senate Bill No. 946

CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[Approved by Governor September 17, 2018. Filed with
Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk

vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.

(2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.

(3) Sidewalk vending contributes to a safe and dynamic public space.

(4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.

(5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

(6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

SEC. 2. Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.2. SIDEWALK VENDORS

51036. For purposes of this chapter, the following definitions apply:

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

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

(c) “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

(d) “Local authority” means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority’s sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(4) (A) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority,

unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:

(1) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.

(4) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the sidewalk vendor.

(B) A description of the merchandise offered for sale or exchange.

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.

(E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

(d) Notwithstanding subdivision (b), a local authority may do both of the following:

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the

Food and Agricultural Code and any regulations adopted pursuant to that chapter. A “swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority’s temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or 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, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

51039. (a) (1) A violation of a local authority’s sidewalk vending program that complies with Section 51038 is punishable only by the following:

(A) An administrative fine not exceeding one hundred dollars (\$100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

(i) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.

(ii) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority 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.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.

Attachment 4 Summary of Ordinance Changes

Generally, the proposed Ordinance amends chapter 5.88 to maintain the City's general restrictions on outdoor vending and makes an exception for outdoor vending that complies with SB 946 through the city's new permitting and regulation structure for sidewalk vending under chapter 5.90, and amends chapter 12.72 to allow for sidewalk vending in parks when the activity complies with park rules and there is no concession stand or restraint with a signed agreement to exclusively sell in the park. The City's Youth, Parks, and Community Enrichment ("YPCE") Department will establish guidelines for vending in parks and the Department of Finance will work with YPCE staff to approve all stationary sidewalk vending permits in city parks.

Specifically, the proposed Ordinance restricts sidewalk vending behavior that threatens the public health, safety and welfare, as allowed by SB 946. For example, the proposed Ordinance restricts sidewalk vending that blocks exits or entryways; limits the size of the cart that is being used to vend; requires that sidewalk vendors leave adequate walking space for pedestrian use in compliance with American Disabilities Act (ADA) on the public sidewalk or easement; and requires the applicant of a sidewalk vending permit to provide the City with proof of applicable health permit to sell food, business operations tax certificates, and liability insurance.

Highlights of Proposed Chapter 5.90

A sidewalk vending permit from the City of Sacramento will be required for all vendors operating on the public sidewalk or pedestrian path.

Permit types:

1. Stationary – vendors who operate from one location during business hours.
 - a. Each permit will be issued for a specific location, but a vendor may be permitted for multiple locations.
 - b. Vendors may obtain a temporary permit to conduct trials of different locations.
 - c. Stationary permits may be issued in public parks, if approved by Youth, Parks, Community Enrichment ("YPCE") Director.
 - d. Vendors must operate in a safe manner, including leaving adequate sidewalk space for pedestrian use.
 - e. Vendors are prohibited from blocking access to business entrances or access to other amenities (e.g., bicycle racks, parking, driveways).
 - f. Stationary permits in high pedestrian areas (e.g., downtown, Old Sacramento) will be issued 400 feet apart to avoid sidewalk congestion.
 - g. Locations of stationary permits will be issued on a first come, first served basis.
 - h. Stationary permits will not be issued in primarily residential areas.
 - i. Vendors will be responsible for waste disposal.

Attachment 4 Summary of Ordinance Changes

2. Roaming – vendors who stop only to complete transactions.
 - a. Roaming vendors may operate in residential zones.
 - b. Roaming vendors may operate in parks.

General restrictions:

1. All sidewalk vendors who offer for sale food, must obtain a health permit from the Sacramento County Environmental Management Division.
2. No sidewalk vendor shall operate within the immediate vicinity of a permitted special event, including a certified farmers' market, unless it is pursuant to a city issued permit.
3. No vendor shall operate within 1,000 feet of a liquor store or venue holding an entertainment permit during the hours of 1:00-3:00 a.m.
4. No vendors shall operate within the immediate vicinity of a school within the hours of 7:00-4:00 p.m.
5. Hours of operation are limited to the hours of operation of adjacent businesses or uses on the same street.
6. All vendors must clearly display valid permits.

ORDINANCE NO.

Adopted by the Sacramento City Council

[Date Adopted]

**AN ORDINANCE ADDING CHAPTER 5.86; AMENDING CHAPTER 5.88; ADDING CHAPTER 5.90;
AND AMENDING SECTIONS 12.72.020, 12.72.060, AND 12.72.070 OF THE SACRAMENTO CITY
CODE, RELATING TO MOBILE SERVICE VEHICLES, OUTDOOR VENDING, AND SIDEWALK
VENDING**

BE IT ENACTED BY THE COUNCIL OF CITY OF SACRAMENTO:

SECTION 1.

Chapter 5.86 is added to the Sacramento City Code to read as follows:

Chapter 5.86 MOBILE SERVICE VEHICLES

5.86.010 Legislative findings and purpose.

The city council finds that mobile service vehicles parked on public rights-of-way for the purpose of selling or offering to sell services impede the free flow of traffic, distract vehicle operators from observing traffic regulations, obstruct the view of pedestrians and of vehicle operators, and encourage pedestrians who wish to inquire about services to cross the street in an unsafe and illegal manner. The public safety necessitates the exercise of the city's police power, through the enactment and enforcement of this chapter, for the purpose of regulating mobile service vehicles.

5.86.020 Definitions.

As used in this chapter:

"Express invitation" means an oral or written request by the property owner or occupant authorizing a mobile service business vehicle to come to the property to perform a service.

"Mobile service vehicle" means any vehicle or similar device being used primarily for the purpose of conducting a service in, at, out of, or next to the vehicle rather than on an adjacent property.

"Public right-of-way" has the same meaning as provided in section 12.12.010.

"Service" means work performed for the benefit of another and for compensation, but does not include selling food.

“Solicit” means to request, offer, entice, or announce the availability or sale of services.

5.86.030 Prohibited activities.

No person shall park a mobile service vehicle on the public right-of-way to sell a service or solicit customers for any service.

5.86.040 Exempted activities.

This chapter does not apply to a person who parks a mobile service vehicle for a reasonable time to make a delivery or to provide a service to the owner or occupant of an adjacent property pursuant to the prior express invitation of the owner or occupant.

SECTION 2.

Chapter 5.88 of the Sacramento City Code is amended to read as follows:

Chapter 5.88 OUTDOOR VENDING

Article I. Street and Sidewalk Vending – General

5.88.010 Sales prohibited.

- A. Except as provided in this chaptercode, no person shall sell, expose for sale, or offer for sale any goods, wares, merchandise, beverages, or foods of any kind or description for which a price is asked, and the article delivered, on or from any public sidewalks, streets, or alleys of the city or the Sacramento Entertainment and Sports Center public pedestrian access easement, as described in sSection 12.44.020 (B), or any public sidewalks, streets, or alleys of the city.
- B. Subsection A does not apply to any person who is vending as an ancillary activity in conjunction with a special event permit issued under cChapter 12.48, and located on any portion of a sidewalk, street, or alley located within three hundred fifty (350) feet of any school building, school ground, playground, recreation park, public park, the Memorial Auditorium, or the Sacramento Entertainment and Sports Center. No permit under Articles II and III of this chapter shall be issued for any of the locations described in this subsection B.
- C. Any person violating a provision of this chapter is guilty of a separate offense for each day, or portion of each day, that the violation continues. Any person who violates a provision of this chapter is guilty of an infraction.

5.88.020 Description of central business district.

As used in this chapter, the “central business district” means all that area within the city of Sacramento bound by lines described as follows:

Beginning at the intersection of the centerline of Third and Q Streets; then, easterly along the centerline of Q Street to the intersection of the centerline of Ninth and Q Streets; thence, northerly along the centerline of Ninth Street to the intersection of the centerline of Ninth and N Streets; thence, easterly along the centerline on N Street to the intersection of the centerline of N Street and the easterly right-of-way line of Tenth Street; thence, northerly along the easterly right-of-way line of Tenth Street to the intersection of the easterly right-of-way line of Tenth Street and the centerline of L Street; thence, easterly along the centerline of L Street to the intersection of the centerline of Fourteenth and L Streets; thence, northerly along the centerline of Fourteenth Street to the intersection of the centerline of Fourteenth Street and the alley between G and H Streets; thence, westerly along the centerline of the G/H Alley to the intersection of the centerline of the G/H Alley and Sixth Street; thence, southerly along the centerline of Sixth Street to the intersection of the centerline of Sixth and I Streets; thence, westerly along the centerline of I Street to the intersection of the centerline of I and Third Streets; thence, southerly along the centerline of Third Street to the point of beginning.

5.88.030 Certain sales permitted.

A. It is unlawful for any person to sell, expose for sale, or offer for sale any goods, wares, merchandise, or food of any kind or description for which a price is asked, and the article delivered, from the public sidewalks, streets or alleys in the central business district, except the following:

1. The sale, dissemination and distribution of newspapers and religious and educational periodicals;
2. The sale of novelties and food during special events held in the central business district, provided such sales are made only in the designated area and the vendor is operating as an ancillary activity in conjunction with a special event for which a permit has been issued under Chapter 12.48;
3. The sale of food, including the operation of food vending vehicles in accordance with Chapter 5.68 of this code, between the hours of seven a.m. and two p.m. at construction sites in the central business district upon which construction activity is taking place;
4. The sale of food or flowers on public sidewalks pursuant to Article III of this chapter, provided the vendor complies with all applicable laws, including, but not limited to, traffic and parking laws, health laws, and the provisions of Sections 5.88.080 through 5.88.180 of this chapter;

- ~~5. The sale, exposing for sale, and offering for sale any goods, wares, merchandise, or food from any public sidewalk, street, or alley or portion thereof, that is the subject of an operations agreement between the city and the Sacramento Regional Transit District for the operation of a light rail station, when undertaken pursuant to a license issued by the Sacramento Regional Transit District.~~
- ~~B. No person shall park a vehicle, car or similar device on a street or alley in the central business district for purposes of selling food or flowers, except that a vehicle can be parked on a street or alley for the purpose specified in subsection (A)(3) of this section.~~
- ~~C. This chapter shall not supersede the provisions of Chapter 12.44 of this code relating to pedestrian mall regulations.~~
- ~~D. In those instances in this chapter where the sidewalk is permitted to be used for commercial purposes, a space on the sidewalk at least six feet in width shall at all times be kept clear for the accommodation of pedestrians.~~
- ~~E. It is unlawful for any person to sell, expose for sale, or offer for sale any goods, wares, merchandise, or food of any kind or description for which a price is asked, and the article delivered, from the public sidewalks, streets, or alleys outside the central business district, except the following:~~
- ~~1. The sale, dissemination and distribution of newspapers and religious and educational periodicals;~~
 - ~~2. The operation of food vending vehicles in accordance with Chapter 5.68 of this code;~~
 - ~~3. The sale, exposing for sale, and offering for sale any goods, wares, merchandise, or food from any public sidewalk, street, or alley or portion thereof, that is the subject of an operations agreement between the city and the Sacramento Regional Transit District for the operation of a light rail station, undertaken pursuant to a license issued by the Sacramento Regional Transit District; or~~
 - ~~4. The vendor is operating as an ancillary activity in conjunction with a special event for which a permit has been issued under Chapter 12.48.~~
- ~~F. The operation of food vending vehicles that is allowed by this article may be undertaken only in compliance with Chapter 5.68 of this code.~~

Article II. Old Sacramento-Street and Sidewalk Vending

5.88.040 Prohibited sales in Old Sacramento.

Except as ~~otherwise~~ provided in this ~~article~~code, no person shall sell or attempt to sell or distribute any goods, wares, merchandise, food, or beverages by means of vending or distributing such goods, wares, merchandise, food, or beverages upon any street, boardwalk, or sidewalk in the Old Sacramento business district.

5.88.050 “Old Sacramento business district” defined.

The “Old Sacramento business district” is described as follows:

Beginning at the intersection of the westerly city limits of the City of Sacramento and the center line of the “I” Street Bridge; thence easterly along the centerline of the Street Bridge and Viaduct to its intersection with the continuation of the easterly line of Third Street; thence southerly along said easterly line of Third Street to the point of intersection with the northerly line of Capitol Mall; thence, westerly along said northerly line of Capitol Mall to the point of intersection with the westerly city limits of the City of Sacramento; thence northerly along said westerly city limits to the point of beginning.

5.88.060 Vendors of merchandise with fixed business locations permitted to vend from sidewalk or boardwalk during specified special events.

Notwithstanding ~~s~~Section 5.88.040, a vendor who has a fixed business location within the Old Sacramento business district from which the vendor regularly sell goods, wares, or merchandise other than food or beverages may vend these goods, wares, or merchandise from the sidewalk or boardwalk immediately adjacent to their fixed business location during any special event within the Old Sacramento business district for which the city has issued a special event permit pursuant to ~~c~~Chapter 12.48 that specifically allows sidewalk or boardwalk vending. All tables and vending carts used for sidewalk or boardwalk vending pursuant to this section shall be approved in advance as part of the special event permit, and shall be positioned so as to leave a minimum of six feet clear on every sidewalk or boardwalk for pedestrians.

5.88.070 Vendors with fixed restaurant locations permitted to vend from sidewalks or boardwalks year-round.

- A. Notwithstanding ~~s~~Section 5.88.040, a vendor who has a fixed restaurant location within the Old Sacramento business district may apply for a sidewalk café revocable encroachment permit pursuant to ~~c~~Chapter 3.76.
- B. The planning director may establish reasonable rules and regulations concerning sidewalk or boardwalk vending in the Old Sacramento business district.

Article III. Vendor's Permit Requirements

5.88.075 Food vending vehicles.

Section 5.88.040 notwithstanding, a person may operate a food vending vehicle, as defined in and in accordance with Chapter 5.68, within Old Sacramento.

5.88.080 Food and flower vendors in central business district—Permit required.

A. The authority to sell food or flowers pursuant to the provisions of Section 5.88.030(A)(4) of this chapter shall be further limited by the provisions of Sections 5.88.080 through 5.88.180 of this chapter. No person shall sell food or flowers on public sidewalks in the central business district pursuant to the provisions of Section 5.88.030(A)(4) of this chapter unless such person has first been issued a food or flower vendor's permit by the city manager for each food or flower cart or business location.

B. Any food or flower vendor lawfully conducting business on the sidewalks of the central business district as defined in Section 5.88.020 of this chapter on the effective date of the ordinance codified in this chapter with a valid permit may continue to conduct such business at the same location so long as the vendor complies with all terms and conditions of the permit and of this chapter.

C. Within sixty (60) days after the effective date of the ordinance codified in this chapter, and every six months thereafter, the city manager shall notify all persons who have expressed interest in obtaining a food or flower vendor's permit and all current permittees that additional locations are available, requesting that any person who wishes to be considered for a new or additional location should notify the city manager. The city manager shall also place an advertisement in the official newspaper of the city and give such additional public notice of the availability of additional locations as he or she deems appropriate.

The city manager shall thereafter conduct a lottery among all those expressing interest in the additional locations, for the purpose of establishing the sequence in which potential applicants may select a location from among those locations which are available. Specific rules and procedures for the lottery and location selection process shall be established by the city manager.

In the event that any previously utilized or assigned location shall become available by abandonment, revocation, attempted transfer, or through any other action or cause, said location shall be included among those locations which may be selected pursuant to the next regularly scheduled lottery.

~~Assignment of a location to a particular person pursuant to the lottery shall be of no force and effect unless that person thereafter applies for and obtains a vendor's permit pursuant to this chapter.~~

5.88.090 Permit—Application.

~~An applicant for a food or flower vendor's permit under Section 5.88.030(A)(4) of this chapter shall submit an application to the city manager. The application shall include, among other things, the following:~~

- ~~A. The true name of the applicant, together with the names of all persons directly or indirectly interested in the conduct of such business, including all members of any firm or partnership. A corporate applicant shall list the officers, directors and principal owners, including all owners of ten (10) percent or more of the corporate stock;~~
- ~~B. Whether the applicant has at any time been convicted of a felony or of any offense involving moral turpitude or has been convicted of any narcotics violation or violation of any gambling laws or ordinances;~~
- ~~C. Whether or not any permit or license heretofore granted to applicant to engage in any business or to do any act within the city or elsewhere has been revoked or denied, and, if so, the circumstances surrounding the revocation or denial;~~
- ~~D. The location at which the applicant proposes to conduct the business;~~
- ~~E. The type of food or general type of flowers to be sold, the proposed hours of operation, and a description, drawing or picture of the cart which is to be operated at the location;~~
- ~~F. Such additional information bearing on the identity and character of the applicant or applicant's employees, the location proposed or the nature of the business as the city manager may require.~~

5.88.100 Permit— Application fee.

~~The application fee for a vendor's permit referred to in Sections 5.88.080 through 5.88.180 of this chapter shall be accompanied by a nonrefundable fee established by resolution of the city council, provided that if an applicant applies for more than one permit at the same time, a reduced application fee for the d and each additional permit shall be established by resolution of the city council. These fees shall be in addition to any fee or tax imposed by Chapter 3.08 of this code.~~

5.88.110 Permit— Investigation and decision.

Application for food or flower vendor's permits shall be investigated by the city manager. The investigation shall take into consideration the character of the applicant and any law enforcement problems which the issuance of the permit might tend to create. The city manager may also consider such other sources of information as are available to him or her and may require the applicant to be fingerprinted.

The city manager may deny an application for a food or flower vendor's permit if the applicant has been convicted of one of the type of category of crimes enumerated in Section 5.88.090(B) of this chapter or, if in his or her opinion, the business is to be located or operated under circumstances where it would tend to cause a law enforcement problem or create a public nuisance or where the granting of the permit would not be compatible with the public health, safety or welfare or would not comply with the provisions of this chapter or would be contrary to the public interest. The city manager shall deny the permit if the application does not meet the location requirements or any other requirements of this chapter.

In granting a permit under this chapter, the city manager shall require vendors to limit their hours of operation to between eight a.m. to six p.m., shall require vendors to remove all of their equipment and wares from the assigned location no later than six p.m. each day, and shall prohibit any vendor from locating closer than twelve (12) feet from the outer edge of any entrance to any building. The manager shall have authority to limit the area which a vendor's cart may cover, to approve the design of any vendor's cart, and to specify the exact location on a block where the vendor shall operate, taking into account pedestrian and vehicular traffic flow and the other standards imposed by this article. The city manager may impose such additional reasonable terms and conditions upon the operation of the business as the manager deems necessary or desirable under the circumstances to protect the health, safety and well-being of the public. The city manager may require all food or flowers to be located on the vendor's cart and may prohibit the location of any food or flowers on sidewalks.

If, for a period of ten (10) or more consecutive days between May 1st and September 30th, or sixty (60) or more consecutive days between October 1st and April 30th, a person with a vendor's permit fails to maintain or operate their vendor's business, then the permit shall be deemed abandoned and shall be revoked.

The vendor's permit shall be attached to and prominently displayed on the vendor's cart.

Prior to the issuance of any permit under this chapter, the applicant shall pay to the city revenue officer any business operations tax and the applicable downtown business improvement area tax required by Chapter 3.08 of this code. Decisions of the city manager relating to the granting or denial of an application for a vendor's permit shall be rendered in writing not less than sixty (60) days after the date of application. Copies of decisions shall be mailed to the applicants not later than five days after the date of decision and shall be mailed to the address of any business, conducted on the street level, which is located within one hundred (100) feet of the site of the vendor's permit.

5.88.120 Permit – Location.

No more than one vendor permit shall be issued for any street intersection in the central business district.

5.88.130 Food and flower vendor's fees.

In addition to the other fees required to be paid as provided by this article and Chapter 3.08 of this code, a fee established by resolution of the city council shall be imposed for each food or flower vendor's permit issued hereunder per year for the purpose of covering the costs of additional city services provided in connection with the vendor's operations.

5.88.140 Appeal of permit decision.

Any aggrieved person wishing to appeal the decision of the city manager in granting or denying an application for a food or flower vendor's permit may do so by filing a written notice of appeal with the city clerk not later than twenty (20) days after the date of mailing the notice of decision of the city manager.

Thereafter such appeal shall be set for hearing by the council. The city clerk shall thereupon notify the appellant that the council has set its hearing upon the appeal and inform the appellant of the time when the appellant will be heard in the matter. Notice of the hearing shall be published once, not less than ten (10) days prior to the hearing, in the official newspaper of the city.

The council may continue its hearing on such appeal from time to time. It may hear evidence from competent persons. It may return the matter to the city manager for further information, or further investigation. The council may affirm, reject or modify the decision of the city manager in regard to the granting or denial of any application or conditions attached to a permit. Notwithstanding the provisions of this section, the city council may follow the procedures set forth in Sections 1.24.010 to 1.24.110 of this code relating to a hearing conducted by a hearing examiner.

5.88.150 Suspension and revocation of permit.

The city manager shall have the right for cause to revoke or suspend any vendor's permit issued hereunder. Any of the grounds upon which he or she may or shall be required to refuse to issue an initial permit shall also constitute grounds for such revocation or suspension. In addition, the failure of the holder of the permit to comply with the provisions of this chapter, other provisions of law, or conditions of the permit shall also constitute grounds for revocation or suspension of such permit.

~~The city manager may revoke or suspend any vendor's permit based upon false representations or other misleading conduct to customers or intended customers made by the vendor or the vendor's employee or representative. The vendor's permit may also be revoked or suspended for failure to keep the area surrounding the vendor's business clean and free of debris from materials used in the vendor's business operation.~~

~~Decisions relating to the suspension or revocation of a permit may be appealed in the same manner as provided in Section 5.88.140 of this chapter.~~

5.88.160 Liability Insurance.

~~Every food or flower vendor shall be covered by an unconditional public general liability insurance policy that includes products and/or completed operations for not less than the following sums:~~

- ~~A. For the injury or death of any one person in any one accident, one hundred thousand dollars (\$100,000.00);~~
- ~~B. For the injury or death to two or more persons in any one accident, three hundred thousand dollars (\$300,000.00);~~
- ~~C. For the damage or destruction of property in any one accident, twenty five thousand dollars (\$25,000.00) or, at the option of the permittee;~~
- ~~D. Five hundred thousand dollars (\$500,000.00) single limit for injury, death or property damage.~~

~~No permit shall be issued or valid until the permittee shall have furnished the city revenue officer with a "certificate of insurance," for each policy required, executed by the company issuing such policy, and approved as to form by the city attorney. Such policies shall contain a provision which includes the city as also named insured and holding the city, its officers and employees harmless from any and all claims for negligence by reason of granting permission to use such public property. Such insurance policies shall contain an endorsement that the company issuing such policy or policies will not allow the same to be cancelled without serving, by first class mail, ten (10) days' notice of cancellation upon the city clerk. Notwithstanding any other provisions of this chapter, the failure of the permittee to carry such policy or policies in force and to properly renew said insurance shall automatically revoke the permit as of the date of expiration of such insurance policy or policies. A payment of the full amount of the application and permit fees required by Sections 5.88.100 and 5.88.130 of this chapter shall be made to the city before any such revoked permit may be reinstated.~~

5.88.170 Transfer of permit.

~~A food or flower vendor's permit is not property and shall have no value. Such permit may not be sold, leased, assigned, hypothecated or transferred in any manner to another person, firm, partnership, or corporation, including new owners in a corporation or partnership, except that a vendor holding a valid permit may transfer said permit to another location where the vendor wishes to operate with the consent of the city manager.~~

5.88.180 No vested right to sell.

~~There shall be no vested right to sell food, flowers, or any goods on the streets, sidewalks, or alleys in the city. The council reserves the right to cancel any permit issued hereunder or prohibit or further restrict the sale of food, flowers, or any goods at any location at any time by amendment of this code.~~

Article ~~IIIV~~. Outdoor Sales and Displays of Merchandise on Private Property

5.88.190 Limitation on outdoor sales and displays on private property-unlawful.

It is unlawful for any person to sell, attempt to sell, or display for sale any merchandise, food, or drink on private property except from within a fully enclosed building, unless ~~the vendor is operating as an ancillary activity in conjunction with a special event for which a permit has been issued under Chapter 12.48-exempted under section 5.88.200.~~

5.88.200 Certain activities or businesses ~~excepted~~exempted.

The prohibition of ~~S~~section 5.88.190 ~~shall~~does not apply to the following activities or businesses:

- A. Sales or displays of merchandise where such sales or displays are permitted as a matter of right or under a conditional use permit pursuant to the Planning and Development Code title 17, chapter 8.48, chapter or 5.44;
- B. Display of merchandise outside a fully enclosed building, in association with a business where purchase of such merchandise ordinarily takes place within the building, unless otherwise prohibited by this code;
- C. Vending machines, when located in service stations, motels, and other "drive-in" businesses;

~~D. Christmas tree sales conducted in accordance with Chapter 5.44;~~

~~E. Fireworks sales conducted in accordance with Chapter 8.48;~~

~~FD. One yard sales (maximum of one per calendar~~ year not to exceed two consecutive days ~~per dwelling unit or lot~~;

~~GE. Sales of newspapers, books, periodicals and other printed material~~ Sidewalk vending permittees as described in chapter 5.90;

~~HF.~~ Mobile health and veterinary clinics; and

~~IG.~~ Fund-raising activities conducted by organizations exempted from the business operations tax by ~~S~~section 3.08.030~~(, B)~~.

5.88.210 Violation-Penalty.

Any person violating ~~s~~Section 5.88.190 of this chapter is guilty of an infraction subject to the provisions of ~~California~~ Government Code ~~s~~Section 36900(b). Any person violating ~~s~~Section 5.88.190 of this chapter ~~shall be deemed is~~ guilty of a separate offense for each day, or portion thereof, during which such violation continues and ~~shall be is~~ punishable therefor as provided in this section.

Article V. Regulation of Mobile Service Business Vehicles

5.88.220 Legislative findings and purpose.

~~The city council finds that mobile service business vehicles parked on public rights-of-way for the purpose of selling or offering to sell services impede the free flow of traffic, distract vehicle operators from observing traffic regulations, obstruct the view of pedestrians and of vehicle operators, and encourage pedestrians who wish to inquire about services to cross the street in an unsafe and illegal manner. The public safety necessitates the exercise of the city's police power, through the enactment and enforcement of this article, for the purpose of regulating mobile service business vehicles.~~

5.88.230 Definitions.

~~As used in this article, the following terms have the meanings respectively ascribed to them:~~

~~"Express invitation" means an oral or written request by the property owner or occupant for another to come to the property for the purpose of providing a service to the owner or occupant.~~

~~"Mobile service business vehicle" means any vehicle, car or similar device being used primarily for the purpose of conducting a service business in, at, out of, or next to the vehicle rather than on private property occupied by the vehicle operator nearby the vehicle.~~

~~“Service” means and includes work performed for the benefit of another.~~

~~“Solicit” means and includes any request, offer, enticement, or action that announces the availability or sale of services.~~

~~5.88.240 Prohibited activities.~~

~~No person shall park a mobile service business vehicle on a street or alley for the purpose of selling or offering to sell any service or soliciting or attempting to solicit clients for any service.~~

~~5.88.250 Exempted activities.~~

~~This article is not intended to apply to the following:~~

~~A. A mobile service business vehicle parked for a reasonable time on a public right-of-way at the prior express invitation of an owner or occupant of adjacent public or private property to provide a service to the owner or occupant.~~

~~B. A mobile service business vehicle parked on private property.~~

~~C. A vehicle parked for a reasonable time to make a delivery.~~

SECTION 3.

Chapter 5.90 is added to the Sacramento City Code to read as follows:

Chapter 5.90 SIDEWALK VENDING

Article I. General Provisions

5.90.010 Purpose and findings.

A. Purpose.

1. Sidewalk vending benefits our community by providing convenience, generating economic vitality, and encouraging pedestrian activity. In addition, it offers an entrepreneurial opportunity for the people in our community to open a small business and provide unique foods and merchandise that may not be available at brick-and-mortar businesses.
2. It is the purpose and intent of the city council to regulate sidewalk vending consistently with state law and implement a strong and effective regulatory

system to protect the health, safety, and welfare of the city's residents and visitors.

B. Findings.

The city council finds as follows:

1. This chapter ensures important objectives and policies of the city are upheld.
2. Residential restrictions on stationary sidewalk vending protects the quality of life of the city's residents and visitors and minimizes disruption to the quiet enjoyment of residential property.
3. Traffic and safety regulations for outdoor vending ensures the safety of the city's residents and visitors and minimizes impacts to public rights-of-way.
4. Prohibiting sidewalk vending within the immediate vicinity of schools during certain hours promotes public safety and minimizes impacts to public rights-of-way and traffic.

5.90.020 Definitions.

As used in this chapter:

"Agent" means a person engaged in sidewalk vending on behalf of a permittee.

"Amplified sound" means speech, music, or other sound projected or transmitted by electronic equipment including amplifiers, loud speakers, microphones, or similar devices; or combinations of devices which are powered by electricity, battery, or combustible fuel; and which are intended to increase the volume, range, distance or intensity of speech, music, or other sound.

"Cart" means a piece of equipment used for outdoor vending which has no motor and is not mobile, except when being pushed, carried, or transported to and from a location. A "cart" includes a pushcart, pedal-driven cart, electric bicycle, wagon, showcase, stand, display, rack, or other nonmotorized conveyance.

"Central city" has the same meaning as in section 17.108.040.

"City manager" means the city manager or the city manager's designee.

"Electric bicycle" has the same meaning as in section 5.18.020.

"Immediate vicinity" means within 400 feet.

“Old Sacramento business district” means the area within the boundary beginning at the intersection of the westerly city limits of the City of Sacramento and the center line of the “I” Street Bridge; thence easterly along the centerline of the Street Bridge and Viaduct to its intersection with the continuation of the easterly line of Third Street; thence southerly along said easterly line of Third Street to the point of intersection with the northerly line of Capitol Mall; thence, westerly along said northerly line of Capitol Mall to the point of intersection with the westerly city limits of the City of Sacramento; thence northerly along said westerly city limits to the point of beginning.

“Outdoor market” has the same meaning as in section 17.108.160.

“Permittee” means a person who holds a valid outdoor vending permit.

“Residential zoning district” has the same meaning as in section 5.68.010.

“School” means any building, portion of building, or group of buildings designed, constructed, and used for public or private education or instruction for minor children including any nursery, elementary, or junior or senior high school. “School” does not include a vocational or professional institution of higher education, including a community college, college, or university.

“Sidewalk” has the same meaning as in section 12.24.010.

“Sidewalk vending” means selling or offering for sale food, drink, or merchandise from a cart or one’s person from a public sidewalk or pedestrian path.

“Sidewalk vending permit” means a permit issued pursuant to this chapter.

“Waste” has the same meaning as in California Code of Regulations, title 22, section 66261.2.

5.90.030 Sidewalk vending permit required.

Except as provided in chapter 5.88, no person shall engage in sidewalk vending on the public sidewalk or pedestrian path without a valid sidewalk vending permit.

5.90.040 Term of sidewalk vending permits; renewal.

- A. A sidewalk vending permit expires on July 31st of the calendar year following its issuance, unless otherwise specified on the permit or revoked sooner in accordance with this chapter.
- B. A permittee must file an application to renew an outdoor vending permit between June 1st and June 30th of the year that the sidewalk vending permit expires.

5.90.050 Sidewalk vending permits are not transferable.

No person shall sell, assign, or transfer in anyway a sidewalk vending permit. Any attempt to sell, assign, or transfer a permit is unlawful and void, and results in the automatic revocation of the permit.

5.90.060 Indemnity.

A permittee shall defend, indemnify, and hold harmless the city, its officers, employees, and agents from and against all actions, losses, damages, liability, costs and expenses of every type and description, including, but not limited to, attorney fees, to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, in whole or in part, the acts or omissions of the permittee or the permittee's agents, officers, or employees, arising from sidewalk vending.

5.90.070 Violations.

- A. Any person who violates a provision of this chapter is subject to an administrative penalty as set forth in this section. The procedures for imposing an administrative penalty for a violation of this chapter are provided in section 1.28.010.
- B. Notwithstanding the provisions of section 1.28.010.D.3, the amount of an administrative penalty is:
 - 1. For a violation of section 5.90.030.A:
 - a. \$250 for a first violation,
 - b. \$500 for a second violation within one year of the first violation, and
 - c. \$1,000 for each additional violation within one year of the first violation.
 - 2. For a violation of any other provision of this chapter:
 - a. \$100 for a first violation,
 - b. \$200 for a second violation within one year of the first violation, and
 - c. \$500 for each additional violation within one year of the first violation.
- C. The city may revoke a sidewalk vending permit upon the fourth or subsequent violation of this chapter.

D. Notwithstanding subsection B.1, upon proof of a valid sidewalk vending permit, the city shall reduce the administrative penalty to the applicable amount in subsection B.2.

5.90.080 Ability-to-pay determination.

A. Notwithstanding any other provision of this code, when imposing an administrative penalty pursuant to this chapter, the city shall provide the person who is the subject of the administrative penalty with notice of the right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination.

B. A person who is the subject of an administrative penalty may request that the city make an ability-to-pay determination on a form prescribed by the city manager while the pursuant to California Government Code section 51039(f)(1).

C. If the person meets the criteria described in subdivisions (a) or (b) of California Government Code section 68632, the city shall accept as full payment of the administrative penalty any of the alternatives described in California Government Code sections 51039(f)(2) or (f)(3).

Article II. Permit Applications and Procedures

5.90.100 Stationary and roaming sidewalk vending permit application process.

The city manager may establish procedures and guidelines to process applications for stationary and roaming sidewalk vending permits.

5.90.110 Stationary and roaming sidewalk vending permit applications.

A person who wants a stationary or roaming sidewalk vending permit shall complete and submit an application and application fee for the permit to the city manager. The application must be on a form approved by the city manager and may require any information or documentation that is consistent with the provisions of this code and state law.

5.90.120 Stationary and roaming sidewalk vending permit application fees established.

The stationary or roaming sidewalk vending permit application and renewal fees, and the additional or change of location fees are established and imposed pursuant to the provisions of this chapter. The amounts of the fees shall be established by resolution of the city council.

5.90.130 Grounds for denial of a stationary or roaming sidewalk vending permit.

The city manager may deny issuance of a stationary or roaming sidewalk vending permit if the city manager determines that one or more of the following circumstances exist:

- A. The application received is incomplete, filed late, or not responsive to the requirements of this chapter.
- B. The application contains a false or misleading statement or omission of a material fact.
- C. The applicant, any registered owner of the business, or any person with a financial interest in the sidewalk vending operations, has any unpaid administrative penalties imposed pursuant to chapter 1.28.
- D. Within 12 months before the date the application was filed, the applicant, any registered owner, or any person with a financial interest in the sidewalk vending operations of the permit has had a permit revoked.
- E. The applicant has not paid the applicable business operations tax pursuant to chapter 3.08.
- F. The applicant or a person with a 10% or greater financial interest in the sidewalk vending operations to be conducted under the permit has been convicted of a crime involving dishonesty, fraud, deceit, or moral turpitude with intent to substantially benefit one's self or another, or substantially injure another, and the time for appeal has elapsed, irrespective of the entry of a subsequent order under California Penal Code section 1203.4.
- G. The proposed sidewalk vending operations poses a threat to public health, safety, or welfare.

5.90.140 Conditions on stationary or roaming sidewalk vending permits.

The city manager may impose reasonable time, place, and manner conditions on a stationary or roaming sidewalk vending permit that directly relate to an objective public health, safety, or welfare concern, in accordance with California Government Code section 51038.

5.90.150 Modification of a stationary sidewalk vending permittee's location.

A stationary sidewalk vending permittee must operate from the permitted location in accordance with section 5.90.330.A; however, the permittee may request modification of the permitted location by completing and submitting a relocation application with the city manager. The relocation application shall be on a form prescribed by the city manager.

5.90.160 Insurance required.

- A. During the term of a stationary or roaming sidewalk vending permit, the permittee shall maintain in full force and effect, at no cost to the city, a commercial general liability insurance policy with the following provisions:
1. Coverage shall be at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury with limits not less than \$1,000,000.00 single limit per occurrence;
 2. Issued by an admitted insurer or insurers as defined by the California Insurance Code;
 3. Providing that the city, its officials, employees and agents are named as additional insureds under the policy;
 4. Covering all losses and damages as specified in this section; and
 5. Stipulating that the policy will operate as primary insurance and that no other insurance or self-insurance maintained by the city or other named insured will be called on to contribute to a loss covered thereunder.
- B. No permittee shall cancel or make a material change in the insurance coverage during the term of the permit, without providing the city manager with 30 days' written notice prior to the effective date of such cancellation or change in coverage.

Article III. Sidewalk Vending Permittee Regulations

5.90.200 Permittees must comply with this chapter and any permit conditions.

No permittee shall engage in sidewalk vending inconsistent with this chapter or the conditions of the sidewalk vending permit.

5.90.210 Agents.

- A. A permittee is responsible for the outdoor vending activities of its agent.
- B. Notwithstanding any other provision of this chapter to the contrary, no agent shall engage in outdoor vending in violation of the provisions of this chapter and, in addition to the permittee, is subject to the fines and penalties under this chapter.

5.90.220 Display of sidewalk vending permit decals and business operations tax certificates.

No permittee shall engage in sidewalk vending without displaying a valid sidewalk vending permit decal in plain view at all times or without posting or keeping on one's person a business operations tax certificate in accordance with section 3.08.100.

5.90.230 Carts.

- A. No permittee shall use a cart that exceeds eight feet in length, six feet in width, and eight feet in height, or that has an overhang that exceeds nine feet in diameter. All other overhangs or tents are prohibited.
- B. In addition to the permit decal and business operations tax certificate described in section 5.90.220, no permittee shall use more than two signs while engaged in sidewalk vending. The signs must be attached, fastened, or connected to a cart and may not exceed an aggregate display surface of 20 square feet.
- C. No permittee shall use an inoperable or immovable cart to engage in sidewalk vending.
- D. No permittee shall leave a cart unattended on a public sidewalk or pedestrian path or on private property without the consent of the owner or occupant.
- E. Notwithstanding subsection A, the city manager may impose additional size or design conditions in accordance with California Government Code section 51038.

5.90.240 Adequate lighting required.

No permittee shall engage in sidewalk vending unless there is adequate lighting for customer safety and visibility. Permittees who use their own lighting shall direct the lighting downward and away from streets and adjacent properties.

5.90.250 Use of amplified sound prohibited.

No permittee shall engage in sidewalk vending with amplified sound.

5.90.260 Hours of operation.

Except as otherwise provided in this chapter, a permittee may only engage in sidewalk vending during the hours of operation of adjacent businesses or uses on the same street.

5.90.270 Food, beverages, merchandise, and waste.

- A. No permittee shall sell or serve alcohol, tobacco, cannabis, or cannabis products as defined in chapter 5.150 while engaging in sidewalk vending.
- B. Permittees shall keep all food, beverages, or merchandise for sale on the cart or their person until it is transferred to the customer.
- C. Permittees shall properly store and dispose of all waste generated by the sidewalk vending operations, including chemical and organic waste, in accordance with applicable law and regulation.

5.90.280 Customer queueing.

Permittees shall engage in sidewalk vending in a manner that does not require or encourage customers to interfere with or obstruct public rights-of-way, pedestrian pathways, or traffic.

5.90.290 Limitations on sidewalk vending in public-rights-of way.

- A. No permittee shall engage in sidewalk vending on the public sidewalk or other pedestrian path, unless at least five feet or 50% of the overall width of the sidewalk or other pedestrian path, whichever is greater, is open to pedestrians.
- B. Notwithstanding subsection A, no permittee shall engage in sidewalk vending:
 - 1. In the central city and the Old Sacramento Business District, where the sidewalk vending operations leave a width of less than six feet on the public sidewalk or other pedestrian path open to pedestrians;
 - 2. In the public pedestrian easement as described in section 12.44.020.B;
 - 3. Within the immediate vicinity of another permittee in high-pedestrian areas as designated on the sidewalk vending permit;
 - 4. In any location that impedes access to any driveway, bicycle rack, crosswalk, off-street parking, parking meter, pedestrian, bicycle route, emergency vehicle routes, garbage receptacle enclosure area, or garbage receptacle;
 - 5. Within six feet of a station or stop of regional transit or other similar transit system or an entrance or exit of any building;
 - 6. Within the immediate vicinity of a school between the hours of 7:00 a.m. and 4:00 p.m. on days that the school is in session;

7. On or next to a playground, playfield, open-space landscaped areas, or jogging trail where the operation will damage its turf or interfere with recreational uses, vehicular access, or pedestrian safety; or
8. Within 1,000 feet of any liquor store or entertainment establishment that maintains a valid entertainment permit issued pursuant to chapter 5.108, between the hours of 1:00 a.m. and 3:00 a.m.

5.90.300 Sidewalk vending near or in a residential zoning district.

- A. No permittee shall engage in sidewalk vending adjacent to a property in a residential zoning district earlier than 8:00 a.m. or later than 8:00 p.m. on any day during the months of April through October, or earlier than 8:00 a.m. or later than 6:00 p.m. on any day during the months of November through March.
- B. Notwithstanding subsection A, no permittee shall engage in sidewalk vending from public rights-of-way adjacent to lots that are vacant or developed exclusively for residential use.

5.90.310 Sidewalk vending in or near certain other facilities.

No permittee shall engage in sidewalk vending:

- A. In a city-owned or -operated parking garage or lot;
- B. In parks that does not comply with the provisions of chapter 12.72.070; or
- C. At or in the immediate vicinity of a special event or outdoor market during the event or market's operating hours, except as pursuant to the applicable permit.

5.90.320 Sidewalk vending on private property.

- A. No permittee shall engage in sidewalk vending on private property without the private property owner's or occupant's consent.
- B. No permittee shall engage in sidewalk vending on private property if the location from which the permittee operates is not paved with concrete, asphalt, or other similar material.
- C. While vending on private property, permittees shall comply with the applicable provisions of this chapter.

5.90.330 Stationary sidewalk vending requirements.

- A. Except for as provided in this chapter, no permittee with a stationary sidewalk vending permit shall engage in sidewalk vending from any location other than the location on a public sidewalk or other pedestrian path for which the permit is granted.
- B. A stationary sidewalk vending permittee who engages in sidewalk vending in a business improvement district shall pay the applicable business improvement area fees.

5.90.340 Roaming sidewalk vending requirement.

A roaming sidewalk vending permittee engaged in sidewalk vending shall only stop for the time reasonably necessary to complete a transaction.

Article IV. Appeal of an Action on a Permit

5.90.400 Appeal of a decision on an outdoor vending permit.

- A. Appeal to Hearing Examiner.
 - 1. Any applicant or permittee aggrieved by the decision of the city manager, in denying, suspending, modifying, or revoking an outdoor vending permit or imposing conditions on the permit, may appeal the decision to a hearing examiner by submitting a written appeal to the city manager within 10 calendar days from the date of service of the notice of denial, suspension, modification, or revocation. The written appeal shall contain:
 - a. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;
 - b. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;
 - c. The signatures of all parties named as appellants and their official mailing addresses; and
 - d. A sworn written statement by at least one appellant as to the truth of the matters stated in the appeal.
 - 2. The appeal hearing shall be conducted by a hearing examiner appointed pursuant to section 8.04.070.

3. Upon receipt of any appeal filed pursuant to this section, the city manager shall transmit the appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:
 - a. If the appeal is received by the city manager not later than 15 calendar days prior to the next regular appeal hearing, it shall be calendared for hearing at said meeting.
 - b. If the appeal is received by the city manager on a date fewer than 15 calendar days prior to the next appeal hearing, it shall be calendared for the next subsequent appeal hearing.
4. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.
5. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.
6. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.
7. In the case of a suspension, modification, or revocation, the permittee may continue to conduct outdoor vending operations or allow outdoor vending operations on their private property during the pendency of any appeal.

B. Hearings—Generally.

1. At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the city manager, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.
2. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.
3. The hearing examiner may, upon request of the appellant or upon request of the city manager, grant continuances from time to time for good cause shown, or upon his or her own motion.

4. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

C. Conduct of Hearing.

1. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. California Government Code section 11513, subdivisions (a), (b), and (c).
2. Oral evidence shall be taken only upon oath or affirmation.
3. Irrelevant and unduly repetitious evidence shall be excluded.
4. Each party shall have these rights, among others:
 - a. To call and examine witnesses on any matter relevant to the issues of the hearing;
 - b. To introduce documentary and physical evidence;
 - c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 - d. To impeach any witness regardless of which party first called the witness to testify;
 - e. To rebut the evidence presented against the party; and
 - f. To represent him, her, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.
5. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.

D. Form and Contents of Decision—Finality of Decision.

1. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, modify, or revoke the permit, the hearing examiner shall affirm the city manager's decision to deny, suspend, modify, or revoke the permit. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.

2. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section.

5.90.410 Appeal of an administrative penalty.

Notwithstanding any provision of this code, any person who is subject to an administrative penalty pursuant to this chapter and wishes to appeal the matter must follow the appeal procedures set forth in chapter 1.28.

5.90.420 Appeal fees established.

- A. The fee to appeal the denial, suspension, modification, or revocation of a permit is established and imposed pursuant to the provisions of this chapter. The amount of the fee shall be established by resolution of the city council.
- B. Notwithstanding the appeal fee established in chapter 1.28, the fee to appeal an administrative penalty pursuant to this chapter is established and imposed pursuant to the provisions of this chapter. The amount of the fee shall be established by resolution of the city council.

SECTION 4.

Section 12.72.020 of the Sacramento City Code is amended to read as follows:

12.72.020 Compliance with title required—Violation, enforcement.

- A. No person shall enter, be, or remain in any park or building unless he or she complies with all regulations set forth in this chapter applicable to such park or building.
- B. Except as specifically provided otherwise, a violation of any provision of this chapter is an infraction.
- C. A violation of sections 12.72.070 or 12.72.135 is not a criminal offense and may be corrected by the bringing of a civil action by the city or the imposition of administrative penalties pursuant to chapters 1.28 and 5.90.
- D. Any person who violates this chapter more than two times within a six-month period is guilty of a misdemeanor, punishable by: a fine of up to \$1000; incarceration up to six

months; and probation with a stay away order from the park or park building where the last violation occurred.

- E. No person cited for violating section 12.72.060 shall remain in the park or building and the person shall immediately vacate the park or building for 24 hours following issuance of the citation. A violation of this subsection is a misdemeanor.

~~F. Violation of the requirement to first obtain a building use permit or a park use permit under this chapter, a special event permit under chapter 12.48, or a lease or concession contract issued under chapter 3.68 or 3.72, for commercial activity in a building or park may result in the confiscation of the vendor's equipment until the fine for the citation has been paid or dismissed.~~

- ~~F.G.~~ The provisions of this chapter and rules and regulations promulgated hereunder may be enforced by the employees of the department, park rangers, and city police officers.

SECTION 5.

- A. Subsection D of section 12.72.060 is amended to read as follows:

- D. Engage in any commercial activity in a park, unless a park use permit under chapter 12.72 or special event permit under ~~c~~Chapter 12.48 has been first issued therefor, ~~or~~ a lease or concession contract was issued under ~~c~~Chapter 3.68 or 3.72, the commercial activity is permitted under section 12.72.070, or the commercial activity is inextricably intertwined with the expression of free speech rights;

- B. Except as provided in subsection A above, section 12.72.060 of the Sacramento City Code remains unchanged and in full effect.

SECTION 6.

Section 12.72.070 of the Sacramento City Code is amended as follows:

12.72.070 Commercial activity.

- A. The director may authorize commercial activity within a park in connection with special programs or activities either sponsored or co-sponsored by the city, or pursuant to a park use permit issued therefor, if ~~he or she~~ the director determines that the commercial activity complements and enhances the special program or activity and does not detract from ~~interfere with~~ the public's use and enjoyment of the park for ordinary park uses. In determining the type and extent of commercial activity to be authorized, the director shall consider the potential impact on the park and surrounding neighborhood. The

director shall establish guidelines for approval of park use permit applications involving commercial activity. The decisions made by the director shall be final.

- B. A sidewalk vending permittee with a permit issued under chapter 5.90 may engage in commercial activity within a park if the vendor complies with the guidelines established by the director to prevent an undue concentration of sidewalk vending permittees in the park, prevent interference with the public's use and enjoyment of the park, and for protection of the public's health, safety, and welfare.
- C. Stationary sidewalk vending permittees are prohibited from engaging in sidewalk vending in a park that has a concession stand or restaurant with a signed agreement to exclusively sell food or merchandise in the park.

ORDINANCE NO.

Adopted by the Sacramento City Council

[Date Adopted]

AN ORDINANCE ADDING CHAPTER 5.86; AMENDING CHAPTER 5.88; ADDING CHAPTER 5.90;
AND AMENDING SECTIONS 12.72.020, 12.72.060, AND 12.72.070 OF THE SACRAMENTO CITY
CODE, RELATING TO MOBILE SERVICE VEHICLES, OUTDOOR VENDING, AND SIDEWALK
VENDING

BE IT ENACTED BY THE COUNCIL OF CITY OF SACRAMENTO:

SECTION 1.

Chapter 5.86 is added to the Sacramento City Code to read as follows:

Chapter 5.86 MOBILE SERVICE VEHICLES

5.86.010 Legislative findings and purpose.

The city council finds that mobile service vehicles parked on public rights-of-way for the purpose of selling or offering to sell services impede the free flow of traffic, distract vehicle operators from observing traffic regulations, obstruct the view of pedestrians and of vehicle operators, and encourage pedestrians who wish to inquire about services to cross the street in an unsafe and illegal manner. The public safety necessitates the exercise of the city's police power, through the enactment and enforcement of this chapter, for the purpose of regulating mobile service vehicles.

5.86.020 Definitions.

As used in this chapter:

"Express invitation" means an oral or written request by the property owner or occupant authorizing a mobile service business vehicle to come to the property to perform a service.

"Mobile service vehicle" means any vehicle or similar device being used primarily for the purpose of conducting a service in, at, out of, or next to the vehicle rather than on an adjacent property.

"Public right-of-way" has the same meaning as provided in section 12.12.010.

"Service" means work performed for the benefit of another and for compensation, but does not include selling food.

“Solicit” means to request, offer, entice, or announce the availability or sale of services.

5.86.030 Prohibited activities.

No person shall park a mobile service vehicle on the public right-of-way to sell a service or solicit customers for any service.

5.86.040 Exempted activities.

This chapter does not apply to a person who parks a mobile service vehicle for a reasonable time to make a delivery or to provide a service to the owner or occupant of an adjacent property pursuant to the prior express invitation of the owner or occupant.

SECTION 2.

Chapter 5.88 of the Sacramento City Code is amended to read as follows:

Chapter 5.88 OUTDOOR VENDING

Article I. Street and Sidewalk Vending – General

5.88.010 Sales prohibited.

- A. Except as provided in this code, no person shall sell, expose for sale, or offer for sale any goods, wares, merchandise, beverages, or foods of any kind on or from any public sidewalks, streets, or alleys of the city or the Sacramento Entertainment and Sports Center public pedestrian access easement, as described in section 12.44.020.B.
- B. Subsection A does not apply to any person who is vending as an ancillary activity in conjunction with a special event permit issued under chapter 12.48, and within 350 feet of any school building, school ground, playground, recreation park, public park, the Memorial Auditorium, or the Sacramento Entertainment and Sports Center.
- C. Any person violating a provision of this chapter is guilty of a separate offense for each day, or portion of each day, that the violation continues. Any person who violates a provision of this chapter is guilty of an infraction.

Article II. Old Sacramento-Street and Sidewalk Vending

5.88.040 Prohibited sales in Old Sacramento.

Except as provided in this code, no person shall sell or attempt to sell or distribute any goods, wares, merchandise, food, or beverages by means of vending or distributing such

goods, wares, merchandise, food, or beverages upon any street, boardwalk, or sidewalk in the Old Sacramento business district.

5.88.050 "Old Sacramento business district" defined.

The "Old Sacramento business district" is described as follows:

Beginning at the intersection of the westerly city limits of the City of Sacramento and the center line of the "I" Street Bridge; thence easterly along the centerline of the Street Bridge and Viaduct to its intersection with the continuation of the easterly line of Third Street; thence southerly along said easterly line of Third Street to the point of intersection with the northerly line of Capitol Mall; thence, westerly along said northerly line of Capitol Mall to the point of intersection with the westerly city limits of the City of Sacramento; thence northerly along said westerly city limits to the point of beginning.

5.88.060 Vendors of merchandise with fixed business locations permitted to vend from sidewalk or boardwalk during specified special events.

Notwithstanding section 5.88.040, a vendor who has a fixed business location within the Old Sacramento business district from which the vendor regularly sell goods, wares, or merchandise other than food or beverages may vend these goods, wares, or merchandise from the sidewalk or boardwalk immediately adjacent to their fixed business location during any special event within the Old Sacramento business district for which the city has issued a special event permit pursuant to chapter 12.48 that specifically allows sidewalk or boardwalk vending. All tables and vending carts used for sidewalk or boardwalk vending pursuant to this section shall be approved in advance as part of the special event permit, and shall be positioned so as to leave a minimum of six feet clear on every sidewalk or boardwalk for pedestrians.

5.88.070 Vendors with fixed restaurant locations permitted to vend from sidewalks or boardwalks year-round.

- A. Notwithstanding section 5.88.040, a vendor who has a fixed restaurant location within the Old Sacramento business district may apply for a sidewalk café revocable encroachment permit pursuant to chapter 3.76.
- B. The planning director may establish reasonable rules and regulations concerning sidewalk or boardwalk vending in the Old Sacramento business district.

Article III. Outdoor Sales and Displays of Merchandise on Private Property

5.88.190 Limitation on outdoor sales and displays on private property.

It is unlawful for any person to sell, attempt to sell, or display for sale any merchandise, food, or drink on private property except from within a fully enclosed building, exempted under section 5.88.200.

5.88.200 Certain activities or businesses exempted.

The prohibition of section 5.88.190 does not apply to the following activities or businesses:

- A. Sales or displays where such sales or displays are permitted as a matter of right or under a conditional use permit pursuant to title 17, chapter 8.48, chapter or 5.44;
- B. Display of merchandise outside a fully enclosed building, in association with a business where purchase of such merchandise ordinarily takes place within the building, unless otherwise prohibited by this code;
- C. Vending machines, when located in service stations, motels, and other "drive-in" businesses;
- D. One yard sale a year not to exceed two consecutive days per dwelling unit or lot;
- E. Sidewalk vending permittees as described in chapter 5.90;
- F. Mobile health and veterinary clinics; and
- G. Fund-raising activities conducted by organizations exempted from the business operations tax by section 3.08.030.B.

5.88.210 Violation-Penalty.

Any person violating section 5.88.190 of this chapter is guilty of an infraction subject to the provisions of California Government Code section 36900(b). Any person violating section 5.88.190 of this chapter is guilty of a separate offense for each day, or portion thereof, during which such violation continues and is punishable therefor as provided in this section.

SECTION 3.

Chapter 5.90 is added to the Sacramento City Code to read as follows:

Chapter 5.90 SIDEWALK VENDING

Article I. General Provisions

5.90.010 Purpose and findings.

A. Purpose.

1. Sidewalk vending benefits our community by providing convenience, generating economic vitality, and encouraging pedestrian activity. In addition, it offers an entrepreneurial opportunity for the people in our community to open a small business and provide unique foods and merchandise that may not be available at brick-and-mortar businesses.
2. It is the purpose and intent of the city council to regulate sidewalk vending consistently with state law and implement a strong and effective regulatory system to protect the health, safety, and welfare of the city's residents and visitors.

B. Findings.

The city council finds as follows:

1. This chapter ensures important objectives and policies of the city are upheld.
2. Residential restrictions on stationary sidewalk vending protects the quality of life of the city's residents and visitors and minimizes disruption to the quiet enjoyment of residential property.
3. Traffic and safety regulations for outdoor vending ensures the safety of the city's residents and visitors and minimizes impacts to public rights-of-way.
4. Prohibiting sidewalk vending within the immediate vicinity of schools during certain hours promotes public safety and minimizes impacts to public rights-of-way and traffic.

5.90.020 Definitions.

As used in this chapter:

"Agent" means a person engaged in sidewalk vending on behalf of a permittee.

"Amplified sound" means speech, music, or other sound projected or transmitted by electronic equipment including amplifiers, loud speakers, microphones, or similar devices; or combinations of devices which are powered by electricity, battery, or combustible fuel; and which are intended to increase the volume, range, distance or intensity of speech, music, or other sound.

"Cart" means a piece of equipment used for outdoor vending which has no motor and is not mobile, except when being pushed, carried, or transported to and from a location. A "cart" includes a pushcart, pedal-driven cart, electric bicycle, wagon, showcase, stand, display, rack, or other nonmotorized conveyance.

"Central city" has the same meaning as in section 17.108.040.

"City manager" means the city manager or the city manager's designee.

"Electric bicycle" has the same meaning as in section 5.18.020.

"Immediate vicinity" means within 400 feet.

"Old Sacramento business district" means the area within the boundary beginning at the intersection of the westerly city limits of the City of Sacramento and the center line of the "I" Street Bridge; thence easterly along the centerline of the Street Bridge and Viaduct to its intersection with the continuation of the easterly line of Third Street; thence southerly along said easterly line of Third Street to the point of intersection with the northerly line of Capitol Mall; thence, westerly along said northerly line of Capitol Mall to the point of intersection with the westerly city limits of the City of Sacramento; thence northerly along said westerly city limits to the point of beginning.

"Outdoor market" has the same meaning as in section 17.108.160.

"Permittee" means a person who holds a valid outdoor vending permit.

"Residential zoning district" has the same meaning as in section 5.68.010.

"School" means any building, portion of building, or group of buildings designed, constructed, and used for public or private education or instruction for minor children including any nursery, elementary, or junior or senior high school. "School" does not include a vocational or professional institution of higher education, including a community college, college, or university.

"Sidewalk" has the same meaning as in section 12.24.010.

"Sidewalk vending" means selling or offering for sale food, drink, or merchandise from a cart or one's person from a public sidewalk or pedestrian path.

"Sidewalk vending permit" means a permit issued pursuant to this chapter.

"Waste" has the same meaning as in California Code of Regulations, title 22, section 66261.2.

5.90.030 Sidewalk vending permit required.

Except as provided in chapter 5.88, no person shall engage in sidewalk vending on the public sidewalk or pedestrian path without a valid sidewalk vending permit.

5.90.040 Term of sidewalk vending permits; renewal.

- A. A sidewalk vending permit expires on July 31st of the calendar year following its issuance, unless otherwise specified on the permit or revoked sooner in accordance with this chapter.
- B. A permittee must file an application to renew an outdoor vending permit between June 1st and June 30th of the year that the sidewalk vending permit expires.

5.90.050 Sidewalk vending permits are not transferable.

No person shall sell, assign, or transfer in anyway a sidewalk vending permit. Any attempt to sell, assign, or transfer a permit is unlawful and void, and results in the automatic revocation of the permit.

5.90.060 Indemnity.

A permittee shall defend, indemnify, and hold harmless the city, its officers, employees, and agents from and against all actions, losses, damages, liability, costs and expenses of every type and description, including, but not limited to, attorney fees, to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, in whole or in part, the acts or omissions of the permittee or the permittee's agents, officers, or employees, arising from sidewalk vending.

5.90.070 Violations.

- A. Any person who violates a provision of this chapter is subject to an administrative penalty as set forth in this section. The procedures for imposing an administrative penalty for a violation of this chapter are provided in section 1.28.010.
- B. Notwithstanding the provisions of section 1.28.010.D.3, the amount of an administrative penalty is:
 - 1. For a violation of section 5.90.030.A:
 - a. \$250 for a first violation,
 - b. \$500 for a second violation within one year of the first violation, and
 - c. \$1,000 for each additional violation within one year of the first violation.

2. For a violation of any other provision of this chapter:
 - a. \$100 for a first violation,
 - b. \$200 for a second violation within one year of the first violation, and
 - c. \$500 for each additional violation within one year of the first violation.
- C. The city may revoke a sidewalk vending permit upon the fourth or subsequent violation of this chapter.
- D. Notwithstanding subsection B.1, upon proof of a valid sidewalk vending permit, the city shall reduce the administrative penalty to the applicable amount in subsection B.2.

5.90.080 Ability-to-pay determination.

- A. Notwithstanding any other provision of this code, when imposing an administrative penalty pursuant to this chapter, the city shall provide the person who is the subject of the administrative penalty with notice of the right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination.
- B. A person who is the subject of an administrative penalty may request that the city make an ability-to-pay determination on a form prescribed by the city manager while the pursuant to California Government Code section 51039(f)(1).
- C. If the person meets the criteria described in subdivisions (a) or (b) of California Government Code section 68632, the city shall accept as full payment of the administrative penalty any of the alternatives described in California Government Code sections 51039(f)(2) or (f)(3).

Article II. Permit Applications and Procedures

5.90.100 Stationary and roaming sidewalk vending permit application process.

The city manager may establish procedures and guidelines to process applications for stationary and roaming sidewalk vending permits.

5.90.110 Stationary and roaming sidewalk vending permit applications.

A person who wants a stationary or roaming sidewalk vending permit shall complete and submit an application and application fee for the permit to the city manager. The application must be on a form approved by the city manager and may require any

information or documentation that is consistent with the provisions of this code and state law.

5.90.120 Stationary and roaming sidewalk vending permit application fees established.

The stationary or roaming sidewalk vending permit application and renewal fees, and the additional or change of location fees are established and imposed pursuant to the provisions of this chapter. The amounts of the fees shall be established by resolution of the city council.

5.90.130 Grounds for denial of a stationary or roaming sidewalk vending permit.

The city manager may deny issuance of a stationary or roaming sidewalk vending permit if the city manager determines that one or more of the following circumstances exist:

- A. The application received is incomplete, filed late, or not responsive to the requirements of this chapter.
- B. The application contains a false or misleading statement or omission of a material fact.
- C. The applicant, any registered owner of the business, or any person with a financial interest in the sidewalk vending operations, has any unpaid administrative penalties imposed pursuant to chapter 1.28.
- D. Within 12 months before the date the application was filed, the applicant, any registered owner, or any person with a financial interest in the sidewalk vending operations of the permit has had a permit revoked.
- E. The applicant has not paid the applicable business operations tax pursuant to chapter 3.08.
- F. The applicant or a person with a 10% or greater financial interest in the sidewalk vending operations to be conducted under the permit has been convicted of a crime involving dishonesty, fraud, deceit, or moral turpitude with intent to substantially benefit one's self or another, or substantially injure another, and the time for appeal has elapsed, irrespective of the entry of a subsequent order under California Penal Code section 1203.4.
- G. The proposed sidewalk vending operations poses a threat to public health, safety, or welfare.

5.90.140 Conditions on stationary or roaming sidewalk vending permits.

The city manager may impose reasonable time, place, and manner conditions on a stationary or roaming sidewalk vending permit that directly relate to an objective public health, safety, or welfare concern, in accordance with California Government Code section 51038.

5.90.150 Modification of a stationary sidewalk vending permittee's location.

A stationary sidewalk vending permittee must operate from the permitted location in accordance with section 5.90.330.A; however, the permittee may request modification of the permitted location by completing and submitting a relocation application with the city manager. The relocation application shall be on a form prescribed by the city manager.

5.90.160 Insurance required.

A. During the term of a stationary or roaming sidewalk vending permit, the permittee shall maintain in full force and effect, at no cost to the city, a commercial general liability insurance policy with the following provisions:

1. Coverage shall be at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury with limits not less than \$1,000,000.00 single limit per occurrence;
2. Issued by an admitted insurer or insurers as defined by the California Insurance Code;
3. Providing that the city, its officials, employees and agents are named as additional insureds under the policy;
4. Covering all losses and damages as specified in this section; and
5. Stipulating that the policy will operate as primary insurance and that no other insurance or self-insurance maintained by the city or other named insured will be called on to contribute to a loss covered thereunder.

B. No permittee shall cancel or make a material change in the insurance coverage during the term of the permit, without providing the city manager with 30 days' written notice prior to the effective date of such cancellation or change in coverage.

Article III. Sidewalk Vending Permittee Regulations

5.90.200 Permittees must comply with this chapter and any permit conditions.

No permittee shall engage in sidewalk vending inconsistent with this chapter or the conditions of the sidewalk vending permit.

5.90.210 Agents.

- A. A permittee is responsible for the outdoor vending activities of its agent.
- B. Notwithstanding any other provision of this chapter to the contrary, no agent shall engage in outdoor vending in violation of the provisions of this chapter and, in addition to the permittee, is subject to the fines and penalties under this chapter.

5.90.220 Display of sidewalk vending permit decals and business operations tax certificates.

No permittee shall engage in sidewalk vending without displaying a valid sidewalk vending permit decal in plain view at all times or without posting or keeping on one's person a business operations tax certificate in accordance with section 3.08.100.

5.90.230 Carts.

- A. No permittee shall use a cart that exceeds eight feet in length, six feet in width, and eight feet in height, or that has an overhang that exceeds nine feet in diameter. All other overhangs or tents are prohibited.
- B. In addition to the permit decal and business operations tax certificate described in section 5.90.220, no permittee shall use more than two signs while engaged in sidewalk vending. The signs must be attached, fastened, or connected to a cart and may not exceed an aggregate display surface of 20 square feet.
- C. No permittee shall use an inoperable or immovable cart to engage in sidewalk vending.
- D. No permittee shall leave a cart unattended on a public sidewalk or pedestrian path or on private property without the consent of the owner or occupant.
- E. Notwithstanding subsection A, the city manager may impose additional size or design conditions in accordance with California Government Code section 51038.

5.90.240 Adequate lighting required.

No permittee shall engage in sidewalk vending unless there is adequate lighting for customer safety and visibility. Permittees who use their own lighting shall direct the lighting downward and away from streets and adjacent properties.

5.90.250 Use of amplified sound prohibited.

No permittee shall engage in sidewalk vending with amplified sound.

5.90.260 Hours of operation.

Except as otherwise provided in this chapter, a permittee may only engage in sidewalk vending during the hours of operation of adjacent businesses or uses on the same street.

5.90.270 Food, beverages, merchandise, and waste.

- A. No permittee shall sell or serve alcohol, tobacco, cannabis, or cannabis products as defined in chapter 5.150 while engaging in sidewalk vending.
- B. Permittees shall keep all food, beverages, or merchandise for sale on the cart or their person until it is transferred to the customer.
- C. Permittees shall properly store and dispose of all waste generated by the sidewalk vending operations, including chemical and organic waste, in accordance with applicable law and regulation.

5.90.280 Customer queueing.

Permittees shall engage in sidewalk vending in a manner that does not require or encourage customers to interfere with or obstruct public rights-of-way, pedestrian pathways, or traffic.

5.90.290 Limitations on sidewalk vending in public-rights-of way.

- A. No permittee shall engage in sidewalk vending on the public sidewalk or other pedestrian path, unless at least five feet or 50% of the overall width of the sidewalk or other pedestrian path, whichever is greater, is open to pedestrians.
- B. Notwithstanding subsection A, no permittee shall engage in sidewalk vending:
 - 1. In the central city and the Old Sacramento Business District, where the sidewalk vending operations leave a width of less than six feet on the public sidewalk or other pedestrian path open to pedestrians;
 - 2. In the public pedestrian easement as described in section 12.44.020.B;
 - 3. Within the immediate vicinity of another permittee in high-pedestrian areas as designated on the sidewalk vending permit;

4. In any location that impedes access to any driveway, bicycle rack, crosswalk, off-street parking, parking meter, pedestrian, bicycle route, emergency vehicle routes, garbage receptacle enclosure area, or garbage receptacle;
5. Within six feet of a station or stop of regional transit or other similar transit system or an entrance or exit of any building;
6. Within the immediate vicinity of a school between the hours of 7:00 a.m. and 4:00 p.m. on days that the school is in session;
7. On or next to a playground, playfield, open-space landscaped areas, or jogging trail where the operation will damage its turf or interfere with recreational uses, vehicular access, or pedestrian safety; or
8. Within 1,000 feet of any liquor store or entertainment establishment that maintains a valid entertainment permit issued pursuant to chapter 5.108, between the hours of 1:00 a.m. and 3:00 a.m.

5.90.300 Sidewalk vending near or in a residential zoning district.

- A. No permittee shall engage in sidewalk vending adjacent to a property in a residential zoning district earlier than 8:00 a.m. or later than 8:00 p.m. on any day during the months of April through October, or earlier than 8:00 a.m. or later than 6:00 p.m. on any day during the months of November through March.
- B. Notwithstanding subsection A, no permittee shall engage in sidewalk vending from public rights-of-way adjacent to lots that are vacant or developed exclusively for residential use.

5.90.310 Sidewalk vending in or near certain other facilities.

No permittee shall engage in sidewalk vending:

- A. In a city-owned or -operated parking garage or lot;
- B. In parks that does not comply with the provisions of chapter 12.72.070; or
- C. At or in the immediate vicinity of a special event or outdoor market during the event or market's operating hours, except as pursuant to the applicable permit.

5.90.320 Sidewalk vending on private property.

- A. No permittee shall engage in sidewalk vending on private property without the private property owner's or occupant's consent.
- B. No permittee shall engage in sidewalk vending on private property if the location from which the permittee operates is not paved with concrete, asphalt, or other similar material.
- C. While vending on private property, permittees shall comply with the applicable provisions of this chapter.

5.90.330 Stationary sidewalk vending requirements.

- A. Except for as provided in this chapter, no permittee with a stationary sidewalk vending permit shall engage in sidewalk vending from any location other than the location on a public sidewalk or other pedestrian path for which the permit is granted.
- B. A stationary sidewalk vending permittee who engages in sidewalk vending in a business improvement district shall pay the applicable business improvement area fees.

5.90.340 Roaming sidewalk vending requirement.

A roaming sidewalk vending permittee engaged in sidewalk vending shall only stop for the time reasonably necessary to complete a transaction.

Article IV. Appeal of an Action on a Permit

5.90.400 Appeal of a decision on an outdoor vending permit.

- A. Appeal to Hearing Examiner.
 - 1. Any applicant or permittee aggrieved by the decision of the city manager, in denying, suspending, modifying, or revoking an outdoor vending permit or imposing conditions on the permit, may appeal the decision to a hearing examiner by submitting a written appeal to the city manager within 10 calendar days from the date of service of the notice of denial, suspension, modification, or revocation. The written appeal shall contain:
 - a. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;
 - b. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;

- c. The signatures of all parties named as appellants and their official mailing addresses; and
 - d. A sworn written statement by at least one appellant as to the truth of the matters stated in the appeal.
- 2. The appeal hearing shall be conducted by a hearing examiner appointed pursuant to section 8.04.070.
- 3. Upon receipt of any appeal filed pursuant to this section, the city manager shall transmit the appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:
 - a. If the appeal is received by the city manager not later than 15 calendar days prior to the next regular appeal hearing, it shall be calendared for hearing at said meeting.
 - b. If the appeal is received by the city manager on a date fewer than 15 calendar days prior to the next appeal hearing, it shall be calendared for the next subsequent appeal hearing.
- 4. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.
- 5. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.
- 6. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.
- 7. In the case of a suspension, modification, or revocation, the permittee may continue to conduct outdoor vending operations or allow outdoor vending operations on their private property during the pendency of any appeal.

B. Hearings—Generally.

- 1. At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the city manager, the appellant, and other competent persons,

including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.

2. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.
3. The hearing examiner may, upon request of the appellant or upon request of the city manager, grant continuances from time to time for good cause shown, or upon his or her own motion.
4. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

C. Conduct of Hearing.

1. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. California Government Code section 11513, subdivisions (a), (b), and (c).
2. Oral evidence shall be taken only upon oath or affirmation.
3. Irrelevant and unduly repetitious evidence shall be excluded.
4. Each party shall have these rights, among others:
 - a. To call and examine witnesses on any matter relevant to the issues of the hearing;
 - b. To introduce documentary and physical evidence;
 - c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 - d. To impeach any witness regardless of which party first called the witness to testify;
 - e. To rebut the evidence presented against the party; and
 - f. To represent him, her, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.
5. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by

the courts of this state or that may appear in any of the official records of the city or any of its departments.

D. Form and Contents of Decision—Finality of Decision.

1. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, modify, or revoke the permit, the hearing examiner shall affirm the city manager's decision to deny, suspend, modify, or revoke the permit. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.
2. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section.

5.90.410 Appeal of an administrative penalty.

Notwithstanding any provision of this code, any person who is subject to an administrative penalty pursuant to this chapter and wishes to appeal the matter must follow the appeal procedures set forth in chapter 1.28.

5.90.420 Appeal fees established.

- A. The fee to appeal the denial, suspension, modification, or revocation of a permit is established and imposed pursuant to the provisions of this chapter. The amount of the fee shall be established by resolution of the city council.
- B. Notwithstanding the appeal fee established in chapter 1.28, the fee to appeal an administrative penalty pursuant to this chapter is established and imposed pursuant to the provisions of this chapter. The amount of the fee shall be established by resolution of the city council.

SECTION 4.

Section 12.72.020 of the Sacramento City Code is amended to read as follows:

12.72.020 Compliance with title required—Violation, enforcement.

- A. No person shall enter, be, or remain in any park or building unless he or she complies with all regulations set forth in this chapter applicable to such park or building.

- B. Except as specifically provided otherwise, a violation of any provision of this chapter is an infraction.
- C. A violation of sections 12.72.070 or 12.72.135 is not a criminal offense and may be corrected by the bringing of a civil action by the city or the imposition of administrative penalties pursuant to chapters 1.28 and 5.90.
- D. Any person who violates this chapter more than two times within a six-month period is guilty of a misdemeanor, punishable by: a fine of up to \$1000; incarceration up to six months; and probation with a stay away order from the park or park building where the last violation occurred.
- E. No person cited for violating section 12.72.060 shall remain in the park or building and the person shall immediately vacate the park or building for 24 hours following issuance of the citation. A violation of this subsection is a misdemeanor.
- F. The provisions of this chapter and rules and regulations promulgated hereunder may be enforced by the employees of the department, park rangers, and city police officers.

SECTION 5.

- A. Subsection D of section 12.72.060 is amended to read as follows:
 - D. Engage in any commercial activity in a park, unless a park use permit under chapter 12.72 or special event permit under chapter 12.48 has been first issued therefor, a lease or concession contract was issued under chapter 3.68 or 3.72, the commercial activity is permitted under section 12.72.070, or the commercial activity is inextricably intertwined with the expression of free speech rights;
- B. Except as provided in subsection A above, section 12.72.060 of the Sacramento City Code remains unchanged and in full effect.

SECTION 6.

Section 12.72.070 of the Sacramento City Code is amended as follows:

12.72.070 Commercial activity.

- A. The director may authorize commercial activity within a park in connection with programs or activities either sponsored or co-sponsored by the city, or pursuant to a park use permit issued therefor, if the director determines that the commercial activity does not interfere with the public's use and enjoyment of the park. In determining the type and extent of commercial activity to be authorized, the director shall consider the potential impact on the park and surrounding neighborhood. The director shall establish

guidelines for approval of park use permit applications involving commercial activity. The decisions made by the director shall be final.

- B. A sidewalk vending permittee with a permit issued under chapter 5.90 may engage in commercial activity within a park if the vendor complies with the guidelines established by the director to prevent an undue concentration of sidewalk vending permittees in the park, prevent interference with the public's use and enjoyment of the park, and for protection of the public's health, safety, and welfare.
- C. Stationary sidewalk vending permittees are prohibited from engaging in sidewalk vending in a park that has a concession stand or restaurant with a signed agreement to exclusively sell food or merchandise in the park.

RESOLUTION NO.

Adopted by the Sacramento City Council

ESTABLISHING FEES TO PROCESS AND ADMINISTER THE SIDEWALK VENDING PROGRAM PURSUANT TO SECTION 5.90 OF THE SACRAMENTO CITY CODE

BACKGROUND

- A. On December 3 the City Council adopted regulations and a permitting process pertaining to sidewalk vending.
- B. Section 5.90 of the Sacramento City Code requires fees be established to offset costs associated with the administration of a sidewalk vending permit program.
- C. The purpose of this resolution is to establish the processing and administrative fees to carry out the sidewalk vending permit program. The amount of the proposed fees is no more than necessary to recover the City's reasonable costs to review and process applications and administer the program.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. Background Statements A. through C. are true and correct.
- Section 2. Department fees and charges are hereby affirmed.
- Section 3. Exhibit A forms part of this resolution.

Table of Contents:

Exhibit A-Sidewalk Vending Permit Fee Schedule

Exhibit A

Fee Name: Stationary Vending Permit (New)

Current Fee: None

Proposed Fee: \$112.00

Task	Estimated Fees
Customer Service Representative (CSR) accepts and reviews application, logs information, creates permit.	\$18.00
Staff review of proposed location to determine suitability.	\$20.00
Manager review and support.	\$74.00
Total Fees:	\$112.00

Justification: Fees recover the estimated costs to accept, process, and review applications for the sidewalk vending program, including performing administrative tasks, ensuring location meets regulations, and manager approval and continued support to the program. Staff involved in program and hourly rates: Customer Service Representative (\$36), Customer Service Supervisor (\$45), Administrative Technician (\$49), and Program Manager (\$78).

Proposition 26: These fees are not “taxes” under Proposition 26, as they fall under the exception set out in Section 1 or Article XIII C, subdivision (e)(3), of a regulatory permit. The fees recoup not more than 100% of the department’s actual cost of processing the application. No fee waivers are provided, and the department’s costs are allocated equally to the persons who apply.

Fee Name: Stationary Vending Permit (Renewal)

Current Fee: None

Proposed Fee: \$63

Task	Estimated Fees
CSR accepts and reviews application, logs information, creates permit.	\$28.00
Manager review and support.	\$35.00
Total Fees:	\$63.00

Justification: Fees recover the estimated costs to accept, process, and review applications for sidewalk vending program, including performing administrative tasks, manager review and determination of approval and continued support to the program. Renewal permits will not require location review. Staff involved in program and hourly rates: Customer Service Representative (\$36), Customer Service Supervisor (\$45), Administrative Technician (\$49), and Program Manager (\$78).

Proposition 26: These fees are not “taxes” under Proposition 26, as they fall under the exception set out in Section 1 or Article XIII C, subdivision (e)(3), of a regulatory permit. The fees recoup not more than 100% of the department’s actual cost of processing the application. No

fee waivers are provided, and the department's costs are allocated equally to the persons who apply.

Fee Name: Stationary Vending Permit – Add/Change Location

Current Fee: None

Proposed Fee: \$55.00

Task	Estimated Fees
CSR accepts and reviews application, logs information, creates permit.	\$15.00
Staff review of application and proposed location to determine suitability.	\$20.00
Manager review and support.	\$20.00
Total Fees:	\$55.00

Justification: Fees recover the estimated costs to accept, process, and review applications for a sidewalk vendor to move or add an additional stationary location. Tasks involve administrative review, location suitability check, approval process, and continued support of program. Staff involved in program and hourly rates: Customer Service Representative (\$36), Customer Service Supervisor (\$45), Administrative Technician (\$49), and Program Manager (\$78).

Proposition 26: These fees are not “taxes” under Proposition 26, as they fall under the exception set out in Section 1 or Article XIII C, subdivision (e)(3), of a regulatory permit. The fees recoup not more than 100% of the department's actual cost of processing the application. No fee waivers are provided, and the department's costs are allocated equally to the persons who apply.

Fee Name: Temporary Vending Stationary Permit

Current Fee: None

Proposed Fee: \$45

Task	Estimated Fees
CSR accepts and reviews application, logs information, creates permit.	\$15.00
Staff review of application and proposed location to determine suitability.	\$10.00
Manager review and support.	\$20.00
Total Fees:	\$45.00

Justification: Fees recover the estimated costs to accept, process, and review applications for a temporary stationary permit to be used to perform a trial run on a location or to vend for a limited occasion/event. Tasks involve administrative review, location suitability check, approval process, and continued support of program. Staff involved in program and hourly rates: Customer Service Representative (\$36), Customer Service Supervisor (\$45), and Program Manager (\$78).

Proposition 26: These fees are not “taxes” under Proposition 26, as they fall under the exception set out in Section 1 or Article XIII C, subdivision (e)(3), of a regulatory permit. The fees recoup not more than 100% of the department’s actual cost of processing the application. No fee waivers are provided, and the department’s costs are allocated equally to the persons who apply.

Fee Name: Additional Fee for Stationary Permit in a Park

Current Fee: None

Proposed Fee: \$30

Task	Estimated Fees
Youth, Parks, and Community Enrichment staff reviews application and determines suitability in proposed park.	\$30.00
Total Fees:	\$30.00

Justification: Fees recover the estimated additional cost for park staff to review the suitability of a proposed park location for a stationary vendor. Staff involved in program and hourly rates: Recreation General Supervisor (\$63).

Proposition 26: These fees are not “taxes” under Proposition 26, as they fall under the exception set out in Section 1 or Article XIII C, subdivision (e)(3), of a regulatory permit. The fees recoup not more than 100% of the department’s actual cost of processing the application. No fee waivers are provided, and the department’s costs are allocated equally to the persons who apply.

Fee Name: Roaming Vending Permit (First Time)

Current Fee: None

Proposed Fee: \$60

Task	Estimated Fees
CSR accepts and reviews application, logs information, creates permit.	\$25.00
Manager review and support.	\$35.00
Total Fees:	\$60.00

Justification: Fees recover the estimated costs to accept, process, and review applications for a roaming sidewalk vendor. Tasks involve administrative review, approval process, and continued support of program. Staff involved in program and hourly rates: Customer Service Representative (\$36), Customer Service Supervisor (\$45), and Program Manager (\$78).

Proposition 26: These fees are not “taxes” under Proposition 26, as they fall under the exception set out in Section 1 or Article XIII C, subdivision (e)(3), of a regulatory permit. The fees recoup not more than 100% of the department’s actual cost of processing the application. No fee waivers are provided, and the department’s costs are allocated equally to the persons who apply.

Fee Name: Roaming Vending Permit (Renewal)**Current Fee:** None**Proposed Fee:** \$40.00

Task	Estimated Fees
CSR accepts and reviews application, logs information, creates permit.	\$25.00
Manager review and support.	\$15.00
Total Fees:	\$40.00

Justification: Fees recover the estimated costs to accept, process, and review renewal applications for a roaming sidewalk vendor. Tasks involve administrative review, approval process, and continued support of program. Staff involved in program and hourly rates: Customer Service Representative (\$36), Customer Service Supervisor (\$45), and Program Manager (\$78).

Proposition 26: These fees are not “taxes” under Proposition 26, as they fall under the exception set out in Section 1 or Article XIII C, subdivision (e)(3), of a regulatory permit. The fees recoup not more than 100% of the department’s actual cost of processing the application. No fee waivers are provided, and the department’s costs are allocated equally to the persons who apply.

Fee Name: City of Sacramento Police Department Criminal History Review**Current Fee:** None**Proposed Fee:** \$25.00

Task	Estimated Fees
Police Department staff reviews system for outstanding warrants and local criminal history.	\$25.00
Total Fees:	\$25.00

Justification: Fees recover the estimated costs to conduct an internal background check of applicants, including checking local databases for criminal history and sex offender registration. Staff involved in tasks and hourly rates: Police Clerk II (\$26) and Program Analyst (\$54).

Proposition 26: These fees are not “taxes” under Proposition 26, as they fall under the exception set out in Section 1 or Article XIII C, subdivision (e)(3), of a regulatory permit. The fees recoup not more than 100% of the department’s actual cost of processing the application. No fee waivers are provided, and the department’s costs are allocated equally to the persons who apply.