

Regular Council Meeting

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FRESNO CITY COUNCIL

CITY OF FRESNO
CITY CLERK'S OFFICE



Supplement Packet

ITEM(S)

2-N (ID 24-1533)

Bill - (For Introduction) - Adding Chapter 10, Article 26 To The Fresno Municipal Code, Entitled "The Sidewalk Vending Ordinance"

Contents of Supplement: Ordinance

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

BILL NO.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
ADDING SECTIONS 10-2601 – 10-2606 OF THE FRESNO
MUNICIPAL CODE

WHEREAS, on September 17, 2018, California Governor Jerry Brown signed Senate Bill 946 (SB 946) into law, which added Chapter 6.2 (commencing with Section 51036) to Part 1 of Division of Title 5 of the California Government Code to regulate sidewalk vendors throughout the state, including within the City of Fresno (the City); and

WHEREAS, SB 946 established requirements for local regulations of sidewalk vendors and required that such regulations to be adopted by a resolution or ordinance; and

WHEREAS, the City has invested ARPA funding into mobile food vendors businesses and growth; and

WHEREAS, vendors have continued to contribute to the local economy and job creation in the City of Fresno; and

WHEREAS, vendors have continued to make the investments into their businesses and pursuing business compliance; and

WHEREAS, vendors of all kind are an integral part of our social and cultural fabric to our city; and

WHEREAS, there has been a rise in local violence directed at mobile food vendors in the City; and

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: CR

Ordinance No.

WHEREAS, the City desires to protect mobile food vendors and ensure their safety on public streets and while at work; and

WHEREAS, on July 20, 2023, the City passed Resolution 23-211 to establish a Sidewalk Vending Pilot Program (Pilot Program) in the Tower District; and

WHEREAS, Code Enforcement inspectors enforced the Pilot Program in the Tower District from August 1, 2023, through October 30, 2023, and there was an improvement in compliance by the sidewalk vendors; and

WHEREAS, on February 1, 2024, the City passed Resolution 2024-024 to establish rules and regulations for Vending in City of Fresno Parks; and

WHEREAS, regulating the locations and manner of operation of vendors is necessary to protect the health, safety, and welfare of the public, the vendors, and their patrons by ensuring a safe path of travel for vehicles and pedestrians. These regulations will ensure safe access to adjacent buildings; and

WHEREAS, prohibiting cooking underneath awnings and close to buildings is necessary to reduce the fire risk and damage to buildings caused by grease and smoke; and

WHEREAS, enforcing regulations for vending on private property is necessary to protect the welfare of the patrons and maintain the quality of neighborhoods; and

WHEREAS, the City finds that the regulations set forth herein are directly related to objective health, safety, and welfare concerns, including but not limited to the health, safety and welfare of vendors, their prospective customers, pedestrians, those protected by the Americans With Disabilities Act, those operating motor vehicles at intersections and in rights-of-way adjacent to sidewalks, and the public at large; and

WHEREAS, the City desires to enact this Ordinance to establish consistent Citywide Sidewalk Vending Procedures throughout the City.

SECTION 1. Section 10-2601 – 10-2606 of the Fresno Municipal Code are added to read:

SECTION 10-2601. TITLE.

This article shall be known as the "Sidewalk Vending Ordinance."

SECTION 10-2602. PURPOSE.

The purpose of this Ordinance is to establish sidewalk vending procedures in the City consistent with Government Code sections 51036 through 51039 while also protecting the health, safety, and welfare of the public. The reasonable time, place, and manner regulations set forth in this Ordinance are necessary to protect the public health, safety and welfare by, among other things, ensuring unobstructed pedestrian travel on City sidewalks and minimizing potential conflicts between motor vehicles and pedestrians and vendors in the public right-of-way. Furthermore, procedures are necessary to prevent unsanitary conditions, and to ensure trash and debris in the areas vending is taking place are removed by vendors.

SECTION 10-2603. DEFINITIONS.

For purposes of this article, the following words and phrases shall have the following meanings:

- (a) "Certified Farmer's 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.

- (b) “Food” means any type of edible substance or beverage intended primarily for consumption by human beings.
- (c) “Immediate vicinity” means within two hundred (200) feet.
- (d) “Median” means roadway medians and parkway islands.
- (e) “Merchandise” means items of tangible personal property or other things of value, including small and easily carried or worn items that are not food or drinks, including but not limited to, souvenirs, toys, articles of clothing, flowers, cellular telephones, etc.
- (f) “Private Property” means any property owned by a private property owner or by a non-City of Fresno entity.
- (g) “Public right-of-way” means the area dedicated to public use for street or pedestrian purposes, including privately owned and maintained roads within the city that are generally held open to the public for purposes of vehicular and pedestrian traffic and includes alleys, driveways, highways, medians, parkways, planter strips, roads, sidewalks, and streets.
- (h) “Roaming sidewalk vendor” means a sidewalk vendor who moves from place to place with stops to complete a transaction.
- (i) “Sidewalk” means that portion of the public right-of-way provided for the primary use of pedestrians along or adjacent to the street, including a public pathway provided for the primary use of pedestrians.

- (j) “Sidewalk vendor” means a person who sells or offers to give away food, drinks, merchandise, other items of tangible personal property, or other things of value, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a sidewalk or other pedestrian path. “Sidewalk vendor” includes “roaming sidewalk vendor” and “stationary sidewalk vendor.”
- (k) “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.
- (l) “Temporary special permit” means a permit issued by the City 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, athletic events, public assemblies, carnivals, festivals, and outdoor concerts.
- (m) “Vend, vends, vended or vending” means to sell, offer for sale, expose or display for sale, solicit offers to purchase, give away, offer to give away, or to barter food or merchandise, or services, or to require someone to negotiate, establish, or pay a fee before providing food or merchandise, even if characterized as a donation.

SECTION 10-2604. REGULATIONS.

- (a) No sidewalk vendor shall sell food or drinks in the City without first obtaining all the following:

1. A Business License pursuant to Chapter 7, Article 10 of the Fresno Municipal Code.
2. A Permit to Operate from the County of Fresno Department of Environment Health.
3. Such other permits as may be required by State or local law.
4. This subsection shall not apply to vendors operating from a compact mobile food operation with 25 square feet or less of display area from which only prepackaged non-potentially hazardous food and whole uncooked produce are sold, pursuant to Health and Safety Code section 114368.1(a).

Those vendors must comply with subsection 2.3(3).

(b) No sidewalk vendor shall sell merchandise in the City without first obtaining all of the following:

1. A Business License pursuant to Chapter 7, Article 10 of the Fresno Municipal Code.
2. Such other permits as may be required by State or local law.

(c) At all times, a sidewalk vendor shall be in possession of a valid government issued identification, business license, and Health Department permit, if applicable. The City-issued business license shall be prominently displayed in a publicly visible location at all times while vending. If the vending is occurring on Private Property, the vendor shall also carry a written authorization to vend from the Private Property owner.

(d) A sidewalk vendor shall maintain a clean and trash-free 10-foot radius around his or her pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance at all times when it is located on public property. A sidewalk vendor shall immediately clean up any food, grease, or other fluid or item related to sidewalk vending activities which fall onto the sidewalk or other public property. When departing a location used for vending, the sidewalk vendor shall remove all trash and debris from the location. No trash or refuse generated by sidewalk vending activities shall be disposed of in public or private trash receptacles; sidewalk vendors must take the trash generated by their activities with them and dispose of it appropriately.

(e) Within the City, for public safety reasons, including pedestrian, vehicular, public and vendor safety, a sidewalk vendor shall not operate within the number of feet designated below from the nearest portion of the corresponding location:

1. Within 200 feet from any freeway on-ramp or off-ramp, except if the vending occurs on private property with owner's written permission.
2. Within 10 feet of another sidewalk vendor, except with the written consent of each vendor to partner with one another.

3. Within 100 feet of a residence with the following exceptions:
 - i. This provision shall not apply to Microenterprise Home Kitchen Operations (MEHKOs) that are fully licensed and approved by the County of Fresno Department of Public Health.
 - ii. This provision shall not apply to vendors selling only fresh produce or non-prepared hot food items such as fruit cups, corn, or snow cones.
 4. Within 50 feet of the entrance or exit from any place of business that has an operational kitchen. If a business closes its kitchen, this restriction shall not apply. This restriction shall only apply to businesses located on the same side of the street the sidewalk vendor is operating on. If a business consents to the vendor's presence, this restriction shall not apply.
 5. For vendors preparing food, within 3 feet of a building.
 6. For vendors preparing food, underneath an awning attached to a building.
- (f) Within the City, for public safety reasons, including pedestrian, public, and vendor safety, a sidewalk vendor shall not operate in such a manner that the vendor, the vendor's cart, the vendor's display, the vendor's goods, or any combination thereof:

1. impedes public use of the sidewalk or right-of-way as required by the Americans with Disabilities Act; or
2. impedes access to or the use of abutting property, including, but not limited to, residences and places of business; or
3. impedes emergency access for the Police, Fire Department, or medical personnel to any abutting property; or
4. is located within 18 inches from the edge of the curb face.

(g) In the event of a traffic accident, medical emergency, gas leak, natural disaster, fire, on-site construction or related work on a capital improvement project, or an emergency situation, the City may temporarily require sidewalk vendors to relocate to another location if doing so is necessary to protect the public's health and safety.

(h) The sale of alcohol, marijuana, adult-oriented material, tobacco products, electronic cigarettes or products that contain nicotine, or any product used to smoke/vape nicotine or marijuana, is prohibited.

(i) Vendors shall be present at all times while any food, drink or merchandise is on display on a Sidewalk. Unattended vending is prohibited.

(j) Vendors shall comply with all applicable noise ordinances, including but not limited to, Chapter 1, Article 4, of the Fresno Municipal Code.

- (k) Vendors shall comply with all applicable odor ordinances, including but not limited to Fresno Municipal Code section 15-2510.
- (l) Vendors shall comply with Resolution 2024-024 for vending in parks in the City.
- (m) Vendors are prohibited from placing canopies, chairs, or tables for customers in public right of way or in a roadway, except for the purpose of their own shade, not for the use of their customers. This provision shall not apply to Microenterprise Home Kitchen Operations (MEHKOs) that are fully licensed and approved by the County of Fresno Department of Public Health and the City of Fresno.
- (n) During a certified Farmer's Market, sidewalk vendors not associated with the Farmer's Market shall not operate within 200 feet of the certified Farmer's Market.
- (o) During an event that has been issued a Temporary Special Permit, sidewalk vendors not associated with the Temporary Special Permit shall not operate within 200 feet of the event.
- (p) When allowing vending on a private property, the property owner shall be responsible for ensuring vendors are complying with the regulations contained within this Resolution. The property owners are ultimately responsible for public nuisance violations on the property pursuant to the Fresno Municipal Code.

SECTION 10-2605. INSPECTION AND ENFORCEMENT.

Representatives of the Fire Department and Code Enforcement shall be permitted, at any time a sidewalk vendor is operating in the City, to inspect a sidewalk vendor's operation, its required permits, and its vended food and goods for compliance with local or state laws and regulations. If necessary, Code Enforcement may request assistance from other City departments.

SECTION 10-2606. VIOLATIONS.

(a) From effective date through June 30, 2025, no monetary citations shall be issued. If a vendor has already been subject to warning or citation under Resolution 23-211 (Tower District Pilot Program) or Resolution 2024-024, monetary citations will be given from effective date. All violations will receive education and written warnings. After July 1, 2025, the citations below will be in full force and effect.

(b) In accordance with State Law, a person found in violation of this Article shall be subject to the following, and except as provided in subsection (d) of this section, these provisions shall be the exclusive penalties applicable to violations of this Resolution:

1. A written warning for a first violation.
2. An administrative fine not exceeding one hundred dollars (\$100) for a second violation within one year of the first violation.
3. An administrative fine not exceeding two hundred dollars (\$200) for a third violation within one year of the first violation.
4. An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(b) A sidewalk vendor may appeal an administrative fine pursuant to Chapter 1, Article 4, of the Fresno Municipal Code.

(c) A sidewalk vendor who has been issued an administrative fine pursuant to this Resolution may request a determination of his or her ability to pay the administrative fine pursuant to the provisions of Government Code section 51039(f). If the sidewalk vendor shows proof to the satisfaction of the hearing officer (if the request is made at the time of an administrative appeal hearing), or the City Manager or his or her designee (if the request is made at any other time), that he or she meets the criteria set forth in Government Code section 68632, subsections (a) or (b), the fine amount shall be reduced to 20 percent of the original fine amount.

(d) Violations of the Fresno Municipal Code not specifically subject to the limitations set forth in Section 51039 of the Government Code shall be subject to enforcement pursuant to the Fresno Municipal Code, as the same may be amended from time to time, in addition to any other applicable penalties or remedies prescribed by law at the time of the violation.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the January 1, 2025.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2024.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2024
Mayor Approval/No Return: _____, 2024
Mayor Veto: _____, 2024
Council Override Vote: _____, 2024

TODD STERMER, CMC
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ,
City Attorney

BY: _____
Christina Roberson Date
Assistant City Attorney