

REPORT TO CITY COUNCIL

DATE: SEPTEMBER 28, 2022

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NAHAN HAMBURGER, CITY MANAGER

BY: DENICE THOMAS, AICP, COMMUNITY DEVELOPMENT DIRECTOR
JESSICA CLEAVENGER, PRINCIPAL PLANNER
ROBERT NESOVIC, SENIOR PLANNER

SUBJECT: MCA-2022-0001 SIDEWALK VENDING ORDINANCE MUNICIPAL CODE AMENDMENT: INTRODUCTION OF ORDINANCE NO. 22-464, REPEALING CHAPTER 7 (PEDDLING) OF ARTICLE IV (PUBLIC PEACE) AND AMENDING ARTICLE VI (TAXES; LICENSES; BUSINESS REGULATIONS) OF THE AGOURA HILLS MUNICIPAL CODE TO ADD A NEW CHAPTER 7 REGARDING SIDEWALK VENDING REGULATIONS CONSISTENT WITH STATE LAW AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Staff is requesting the City Council conduct a public hearing and introduce, read by title only, and waive further reading of Ordinance No. 22-464 (Sidewalk Vending Ordinance – Exhibit A). The City is the applicant for this Ordinance, which repeals regulations pertaining to peddling and adopts regulations pertaining to sidewalk vending consistent with State law.

On September 17, 2018, the Governor of California signed into law Senate Bill (SB) 946, which limits the authority of cities and counties to regulate sidewalk vendors. SB 946 became effective on January 1, 2019, and added a new chapter to the Government Code to narrow discretion of local governments with respect to sidewalk vendors by setting parameters for local regulations and prohibiting the imposition of criminal penalties. SB 946's purpose is to promote entrepreneurship, to support immigrant and low-income communities, and to remove barriers to economic development opportunities.

SB 946 defines "sidewalk vendors" as any person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from his or her person, while on a public sidewalk or other pedestrian path. A sidewalk vendor may be "stationary" or "roaming." Stationary sidewalk vendors are those who operate from a fixed location, while roaming sidewalk vendors move from place to place and stop only to complete a transaction. Currently the Agoura Hills Municipal Code (AHMC) is silent on sidewalk vendors but contains two Sections (AHMC §4700 and §4701) within Chapter 7 (Peddling) of Article IV (Public

Peace) that include provisions for peddling. These provisions regulate the act of peddling, selling, or delivering food from a motorized or nonmotorized vehicle on a street, sidewalk or other public property within 500 feet of a school or public park. The proposed Ordinance repeals these provisions from Article IV, Chapter 7 and creates a new Chapter 7 (Sidewalk Vendor Regulations) within Article VI (Taxes; Licenses; Business Regulations).

SB 946 prohibits local authorities from adopting regulations that do any of the following:

- Restrict the overall number of sidewalk vendors allowed to operate within the jurisdiction, except if directly related to objective health, safety, or welfare concerns.
- Require sidewalk vendors to obtain the consent or approval of any nongovernmental entity or individual before selling goods or merchandise.
- Require sidewalk vendors to operate within specific parts of the public right-of-way, except if directly related to objective health, safety, or welfare concerns.
- Require sidewalk vendors to operate only in designated neighborhoods or areas, except if directly related to objective health, safety, or welfare concerns.

Local authorities may, however, regulate the time, place, and manner in which sidewalk vending is conducted, provided such regulations are directly related to objective health, safety, or welfare concerns. Permissible regulations include, but are not limited to, the following:

- Limits on hours of operation, provided they are not unduly restrictive. In nonresidential areas, limitations cannot be more restrictive than the hours of operation imposed on other businesses on the same street.
- Requirements to maintain sanitary conditions.
- Requirements to ensure compliance with the Americans with Disabilities Act and other disability access standards.
- Requiring a sidewalk vending permit, business license, California Department of Tax and Fee Administration seller's permit, and/or other licenses from other state or local agencies.
- Requiring a sidewalk vendor to submit certain information on his or her operations.
- Requiring compliance with other generally applicable laws.

With regard to regulating the location of sidewalk vendors, SB 946 requires local jurisdictions to allow "roaming" sidewalk vendors in all residential zones but may prohibit "stationary" sidewalk vendors in areas that are zoned exclusively residential.

SB 946 also precludes local authorities from outright prohibiting sidewalk vendors in public parks. One exception to this provision is where a concessionaire has been granted an exclusive concession for the sale of food or merchandise. In such a case, the local authority can prohibit stationary sidewalk vendors but must allow roaming sidewalk vendors in public parks. In order to apply time, place, and manner restrictions

to sidewalk vending in public parks, the restriction must meet at least one of the following criteria:

- The restriction is directly related to health, safety, or welfare concerns.
- The restriction is necessary to ensure the public's use and enjoyment of the park's natural resources and recreational opportunities.
- The restriction is necessary to prevent an undue concentration of commercial activity that would unreasonably interfere with the park's scenic and natural character.

Local authorities may prohibit sidewalk vendors within the immediate vicinity of permitted certified farmers' markets and permitted swap meets, during those events' operating hours.

Similarly, sidewalk vendors can be restricted or prohibited within the immediate vicinity of an area for which the local authority has issued a temporary use permit, such as an encroachment permit or special event permit for filming, a parade, or an outdoor concert. The prohibition on sidewalk vending can only be effective for the duration of the temporary use permit, and sidewalk vendors must be provided notice, business interruption mitigation, or any other rights that are provided to other affected businesses or property owners.

SB 946 precludes the imposition of criminal penalties. Instead, violations may be punished with administrative citations in the amounts set forth in Government Code §51039. No additional fines, penalties, or other financial conditions may be assessed, including for a failure to pay an administrative fine. However, following a fourth violation of local sidewalk vending regulations, a vendor's license can be rescinded for the remainder of the permit term.

Once a citation is issued, the local authority is required to consider the person's ability to pay the fine, and must notify the person of his or her right to file a hardship waiver pursuant to AHMC Article I (General Provisions), Chapter 5 (Administrative Citations). Such a request may be made even after he or she has become delinquent on payment. Further, if the person is a recipient of certain means-tested government benefits, or his or her income is 125% or less of the current federal poverty guidelines, the local authority must accept payment of 20% as full satisfaction of the fine. For any citation, the local authority may accept community service in lieu of payment, waive the administrative fine, or offer an alternative disposition.

The proposed Ordinance (Exhibit A) will repeal existing regulations related to peddling near schools and public parks (AHMC §4700 and §4701) and create a new chapter (Chapter 7 – Sidewalk Vendor Regulations) within Article VI of the AHMC establishing regulations that are consistent with state law. The new chapter pertaining to sidewalk vendor regulations will include the following sections:

§6700 – Definitions

§6701 – License Required

§6702 – Operating Requirements

§6703 – Administrative Citations

The Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), as there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. Accordingly, this Ordinance is not subject to the requirements of CEQA pursuant to Sections 15061(b)(3) and 15378 of Division 6 of Title 14 of the California Code of Regulations.

RECOMMENDATION

Staff respectfully recommends the City Council introduce, read by title only, and waive further reading of Ordinance No. 22-464, repealing Chapter 7 (Peddling) of Article IV (Public Peace) and amending Article VI (Taxes; Licenses; Business Regulations) of the Agoura Hills Municipal Code to add a new Chapter 7 regarding sidewalk vending regulations consistent with state law and making a determination of exemption under the California Environmental Quality Act.

Attachment(s): Exhibit A - Ordinance No. 22-464

ORDINANCE NO. 22-464

AN ORDINANCE OF THE CITY OF AGOURA HILLS, CALIFORNIA, REPEALING CHAPTER 7 (PEDDLING) OF ARTICLE IV (PUBLIC PEACE) AND AMENDING ARTICLE VI (TAXES; LICENSES; BUSINESS REGULATIONS) OF THE AGOURA HILLS MUNICIPAL CODE TO ADD A NEW CHAPTER 7 REGARDING SIDEWALK VENDING REGULATIONS CONSISTENT WITH STATE LAW AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, Senate Bill ("SB") 946 was signed into law on September 17, 2018, and became effective January 1, 2019;

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

WHEREAS, the City of Agoura Hills Municipal Code is currently silent on sidewalk vending;

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

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

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

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

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

WHEREAS, the City Council finds that restrictions on sidewalk vending in public parks is necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities, and to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of these parks; and

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

NOW, THEREFORE, the City Council of the City of Agoura Hills does ordain as follows:

Section 1. The facts set forth in the recitals of this Ordinance are true and correct.

Section 2. The proposed amendments are consistent with the objectives of Article I (General Provisions) of the Agoura Hills Municipal Code and with the City General Plan. The Ordinance is consistent with Goal LU-7 of the General Plan Livable and Quality Neighborhoods Element, which calls for the city to provide neighborhoods that contain a mix of uses and services that support the needs of their residents. The Ordinance is consistent with Policy LU-7.5 of Goal LU-7, which encourages the development of walkable neighborhoods by maintaining sidewalks and parkways to promote walking as an enjoyable and healthy activity.

Section 3. Chapter 7 (PEDDLING) is hereby repealed in its entirety from Article IV (PUBLIC PEACE) of the Agoura Hills Municipal Code as follows (text to be deleted is shown in strikethrough):

~~“Chapter 7. PEDDLING~~

~~4700. Peddling near schools prohibited.~~

~~No person shall peddle, sell, or deliver food or beverages for human consumption from a motorized or nonmotorized vehicle on a street, sidewalk or other public property within five hundred (500) feet of the property line of any public or private elementary or secondary school between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday.~~

~~4701. Peddling near public parks.~~

~~No person shall peddle, sell, or deliver food or beverages for human consumption from a motorized or nonmotorized vehicle on a street, sidewalk or other public property within five hundred (500) feet of the property line of any public park unless a permit is issued by the city council or its designated representative authorizing such activity.~~

Section 4. A new Chapter 7 (SIDEWALK VENDOR REGULATIONS) is hereby added to Article VI (TAXES; LICENSES; BUSINESS REGULATIONS) of the Agoura Hills Municipal Code to read as follows:

“Chapter 7. SIDEWALK VENDOR REGULATIONS

6700. - Definitions.

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

“Certified farmers’ market” means a location operated in accordance with Chapter 10.5 of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that Chapter.

“Director” means the Director of Community Development of the City of Agoura Hills.

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

“Sidewalk vendor” means a person who vends from a vending cart or from one’s person, upon a public sidewalk, parkway, pedestrian path, or other public right-of-way available to pedestrians.

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

“Swap meet” means a location operated in accordance with Article 6 of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

“Vend” or *“vending”* means to sell, offer for sale, display for sale, or solicit offers to purchase, food, food products, beverages, goods, or merchandise.

“Vending cart” means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used for vending, that is not a vehicle as defined in the California Vehicle Code.

6701. - License Required. No person, either for themselves or any other person, shall conduct or engage in sidewalk vending within the City without first obtaining a business license pursuant to Chapter 8 of this Article VI.

6702. - Operating Requirements. Sidewalk vendors shall comply with the following:

- A. No sidewalk vendor shall vend in the following locations:
1. Within thirty (30) feet of any street intersection or traffic signal pole or stop sign. When there is no curb, vending is not permitted within forty (40) feet of the edge of the pavement of the cross roadway;
 2. Within ten (10) feet of any fire hydrant, fire call box, or other emergency facility;
 3. Within ten (10) feet of any driveway or driveway apron, or Americans with Disabilities Act (ADA) ramp;
 4. On any roadway, adjacent shoulder, or sidewalk within five hundred (500) feet of any freeway on-ramp or off-ramp per California Vehicle Code §22520.5;
 5. Within five hundred (500) feet of a city-permitted special event;
 6. Within five hundred (500) feet of a permitted certified farmers' market, a swap meet, or an area designated for a temporary use permit. This prohibition shall be limited to the operating hours of the farmers' market or swap meet, or the limited duration of the temporary use permit;
 7. Within five hundred (500) feet of the property line of any public or private elementary or secondary school between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday;
 8. Within any park where the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire, unless the vendor is a roaming sidewalk vendor; and
 9. Upon or within any roadway, median strip, or dividing section.
- B. Neither the sidewalk vendor nor any structures or equipment used in connection with their sidewalk vending activities shall obstruct pedestrian or vehicular traffic.
- C. Sidewalk vendors must provide a clear path of travel pursuant to ADA standards not less than forty-eight (48) inches on all sidewalks or pedestrian areas so as to enable persons to freely pass while walking, running, or using mobility assistance devices.
- D. Any pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used for sidewalk vending activities on a public sidewalk or other pedestrian path shall not exceed a total width of four (4) feet, a

Exhibit A

total length of four (4) feet, and a total height of four (4) feet, not including any umbrella.

- E. No vendor shall erect, place, or maintain any tent, canopy or other temporary shelter (excluding umbrellas) in the public right-of-way. A sidewalk vendor may have one (1) umbrella. The use of an umbrella shall not exceed ten (10) feet in height as measured from ground level to its highest point. The umbrella cannot be attached or anchored to any public or private sidewalk, bench, fence or tree.
- F. All structures shall be safely secured to the ground to eliminate potential bodily injuries to the public and shall be removed at the end of day when the sidewalk vendor has concluded their daily business activities.
- G. No vending cart shall become a permanent fixture on the vending site or be considered an improvement to real property.
- H. Sidewalk vendors are permitted in nonresidential zones during the hours of operation of other businesses or uses on the same street.
- I. Roaming sidewalk vendors are permitted between the hours of 8:00 a.m. and 8:00 p.m. in areas that are zoned exclusively residential areas.
- J. Stationary sidewalk vendors shall not vend in areas that are zoned exclusively residential.
- K. Sidewalk vendors shall provide a trash receptacle for customers and ensure proper disposal of customer trash. Prior to leaving any vending location, the sidewalk vendor shall pick up, remove, and dispose of all trash generated by the vending operations or the vendor's customers within a twenty-five (25) foot radius of the vending location.
- L. Sidewalk vendors shall possess at all times while vending a valid business license issued pursuant to Chapter 8 of this Article VI, as well as any other permit or license required by the City and any other appropriate governmental agency including, but not limited to, the Los Angeles County Department of Public Health.
- M. Sidewalk vendors shall comply with all applicable state and local laws, including without limitation state food preparation, handling, and labeling requirements; fire codes and regulations; noise standards; and the Americans with Disabilities Act of 1990 and other disability access standards (both state and federal).
- N. The name of the owner of the sidewalk vending business and contact information shall be kept on site at all times.
- O. Sidewalk vendors shall relocate if construction improvements are approved in the area that affect the sidewalk vendor's location directly or due to safety of the

Exhibit A

construction operation. Sidewalk vendors will be given one week's notice prior to the necessary vacation of the location to the greatest extent practicable. Should emergency work be necessary, notice may be immediate. Any and all materials associated with the vending operation will be removed from the site and vending will not recommence until such time that the construction and any cleanup operations have been completed.

6703. - Administrative Citations.

- A. A violation of this chapter by a sidewalk vendor is punishable only by an administrative citation pursuant to Article I, Chapter 5 (Administrative Citations) of this Code, in amounts not to exceed the following:
 - 1. One hundred dollars (\$100) for a first violation.
 - 2. Two hundred dollars (\$200) for a second violation within one year of the first violation.
 - 3. Five hundred dollars (\$500) for each additional violation within one year of the first violation.
- B. A violation of this chapter shall not be punishable as an infraction or misdemeanor. No person alleged to have violated the provisions herein shall be subject to arrest except when otherwise permitted by law.
- C. Failure to pay an administrative citation issued pursuant to this section shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized herein shall not be assessed.
- D. Any person to whom an administrative citation is issued may appeal the citation no later than twenty (20) days from the date of the service of the administrative citation pursuant to Article I, Chapter 5 (Administrative Citations) of this Code.
- E. If the person is a recipient of certain means-tested government benefits, or his or her income is 125% or less of the current federal poverty guidelines, the City shall accept, in full satisfaction, 20% of the total administrative fine imposed. The hearing officer may allow any person to complete community service in lieu of paying the total administrative citation, may waive the administrative citation, or may offer an alternative disposition.
- F. The City may rescind a business license issued to a sidewalk vendor for the term of that business license upon the fourth violation or subsequent violations."

Section 5. CEQA. The City Council finds and determines that there is no possibility that the adoption of this Ordinance will have a significant effect on the

environment. Accordingly, this Ordinance is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15378 of Division 6 of Title 14 of the California Code of Regulations.

Section 6. **Severability Clause.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or circumstances, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsections, subdivision, paragraph, sentence, clause, phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 7. **Effective Date.** This Ordinance shall take effect thirty (30) days after passage.

Section 8. **Certification.** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

Exhibit A

PASSED, APPROVED, AND ADOPTED this ___ day of _____, 2022, by the following vote to wit:

AYES: (
NOES: (
ABSENT: (
ABSTAIN: (
)

Deborah Klein Lopez, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney