

ORDINANCE NO. 18-0025-U

AN URGENCY ORDINANCE OF THE CITY OF MANHATTAN BEACH ADDING A NEW CHAPTER 6.24 TO THE MANHATTAN BEACH MUNICIPAL CODE TO CREATE A SIDEWALK VENDING PROGRAM, AMENDING RELATED PROVISIONS OF THE MANHATTAN BEACH MUNICIPAL CODE, MAKING A DETERMINATION OF EXEMPTION UNDER CEQA, AND DECLARING THE URGENCY THEREOF

RECITALS

WHEREAS, Senate Bill (“SB”) 946 was signed into law on September 17, 2018, and becomes 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 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 permits and comply with applicable sanitation, food preparation, and food handling laws, and thereby will protect the public health and safety against health problems such as food contamination, poor hygienic practices, and the threat of food poisoning;

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, City parks, including the City's public beach and pier area, 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, including the City's public beach and pier area, 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;

WHEREAS, the City Council finds that restrictions on sidewalk vending in residential areas are necessary to ensure that such areas are protected from excessive noise and traffic impacts while allowing economic opportunities for sidewalk vendors;

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 of the health, safety, and welfare of its residents, businesses, and visitors;

WHEREAS, Government Code Section 36937(b) authorizes the City Council to adopt an urgency ordinance to become effective immediately upon a four-fifths vote, when such an ordinance is necessary for the immediate preservation of public peace, health, and safety; and

WHEREAS, pursuant to Government Code Section 36937(b), the City Council finds that it is necessary for this ordinance to take effect immediately in order to preserve the public peace, health, and safety of the City's residents, businesses, and visitors.

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

Section 1. Urgency Finding. Due to the effective date of SB 946, the City's regulations governing sidewalk vending activities need to be updated prior to January 1, 2019. If sidewalk vending is allowed without regulation on January 1, 2019, there is the potential that vending carts will proliferate throughout the City and begin operating on City sidewalk and pathways without regard to the potential impacts to health, safety, and welfare. Vending carts may be four or more feet wide and six or more feet long, and must be shared by a variety of users. Restrictions on sidewalk vending are necessary to ensure that the presence of vending carts, vendors, and customer queues will not prevent pedestrians and disabled individuals from using the City's sidewalks, or force such individuals into the streets where they may face risks from vehicle or bicycle traffic. Such restrictions are further necessary to ensure that vending carts located in the public-right-of-way do not interfere with the provision of police, firefighter, or other emergency personnel services, such as by blocking access to fire hydrants or local businesses or residences where such services may be needed. Finally, the permitting program established herein is necessary to protect the health, safety, and welfare of potential

street vending customers, as it will ensure that vendors of food and food products have obtained county health permits and are complying with applicable sanitation and food preparation, labeling, and handling laws. Based on the foregoing, the City Council finds that a current and immediate threat to the public health, safety, and welfare is presented by unregulated sidewalk vending.

Section 2. The Manhattan Beach Municipal Code is hereby amended to add a new Chapter 6.24, which shall read as follows:

“Chapter 6.24 Sidewalk Vending

6.24.010 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 Manhattan Beach Director of Finance.

“Person” shall mean one or more natural persons, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs, or organizations composed of two or more individuals (or the manager, lessee, agent, servant, officer, or employee of any of them), whether engaged in business, nonprofit, or any other activity.

“Roaming sidewalk vendor” 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.

“Temporary special permit” means a permit issued by the City for the temporary use of, or encroachment on, the sidewalk or any other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerns.

“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 non-motorized conveyance used for vending, that is not a vehicle as defined in the California Vehicle Code.

6.24.020 Permit Required. No person, either for themselves or any other person, shall conduct or engage in sidewalk vending within the City without first obtaining a sidewalk vending permit pursuant to this chapter.

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

- A. The legal name and current address and telephone number of the applicant;
- B. If the applicant is an agent of an individual, company, partnership, corporation, or other entity, the name and business address of the principal;
- C. A description of the food or merchandise offered for sale;
- D. A description of the area(s) the applicant wishes to operate;
- E. Whether the applicant intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor;
- F. A copy of a valid business license issued pursuant to Manhattan Beach Municipal Code Chapter 6.01;
- G. A California seller’s permit number pursuant to Revenue and Taxation Code Section 6067;
- H. Certification by the applicant that the information contained in the application is true to his or her knowledge and belief;
- I. If a vendor of food or food products, certification to completion of a food handler course and proof of all required approvals from the Los Angeles County Department of Public Health and any applicable discharge permits, in compliance with Manhattan Beach Municipal Code Chapter 5.38;
- J. Proof of liability insurance; and
- K. Any other reasonable information regarding the time, place, and manner of the proposed vending.

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

- A. Information contained in the application, or supplemental information requested from the applicant, is false in any material detail;
- B. The applicant has failed to provide a complete application, after having been notified of the requirement to produce additional information or documents; or
- C. The applicant has failed to demonstrate an ability to conform to the operating standards set forth in section 6.24.090.
- D. The applicant has failed to pay any previous administrative fines, complete any community service, and/or complete any other alternative disposition associated with a previous violation of this chapter

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

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

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

6.24.070 Appeals. Any person aggrieved by the decision of the Director to issue, deny issuance, or rescind a sidewalk vending permit may appeal the decision to the City Council. The appeal shall be filed with the City Clerk within 15 days following the date of the Director's decision.

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

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

- A. No sidewalk vendor shall vend in the following locations:
 - 1. Within 15 feet of any street intersection;
 - 2. Within 10 feet of any fire hydrant, fire call box, or other emergency facility;
 - 3. Within 10 feet of any curb which has been designated as white, yellow, green, blue, or red zone, or a bus zone;
 - 4. Within 10 feet of any driveway or driveway apron;
 - 5. Upon or within any roadway, median strip, or dividing section;

6. Within 500 feet of a permitted certified farmers' market, fair, swap meet, or an area designated for a temporary special permit. This prohibition shall be limited to the operating hours of the farmers' market, fair or swap meet, or the limited duration of the event issued a temporary special permit;
 7. In any City parking lot;
 8. On private property without the consent of the property owner; or
 9. Within 200 feet of another vendor.
- B. No sidewalk vendor shall vend in a manner that blocks or obstructs the free movement of pedestrians or vehicles. Sidewalk vendors must at all times provide a clearance of not less than three feet on all sidewalks or pedestrian areas so as to enable persons to freely pass while walking, running, or using mobility assistance devices;
- C. Sidewalk vending is permitted between the hours of 8:00 a.m. and 10:00 p.m., daily, except as follows:
1. In residential areas, sidewalk vending shall be permitted between the hours of 9:00 a.m. and 6:00 p.m.
 2. In nonresidential areas, the limit on hours of operation shall not be more restrictive than the hours of operation of other businesses or uses on the same street.
 3. In City parks, sidewalk vending shall be permitted during hours open to the public.
- D. Stationary sidewalk vendors shall not vend in areas that are zoned exclusively residential.
- E. Stationary sidewalk vendors shall not vend at any park where the park operator has an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire.
- F. Sidewalk vendors shall provide a trash receptacle for customers and shall 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 15 foot radius of the vending location.
- G. Vendors of food or food products shall possess and display in plain view on the vending cart a valid Public Health Permit from the Los Angeles County Department of Public Health.

- H. Sidewalk vendors shall possess at all times while vending a valid permit issued pursuant to this chapter, as well as any other permit or license required by the City and any other appropriate governmental agency.
- I. Sidewalk vendors shall possess at all times while vending, current liability insurance.
- J. Sidewalk vendors shall comply with all applicable state and local laws, including without limitation state food preparation, handling, and labeling requirements; fire codes and regulations; noise standards; and the Americans with Disabilities Act of 1990 and other disability access standards (both state and federal).
- K. Sidewalk vendors shall not operate on any bike path, sharrow, or bike trail, including but not limited to the bike path adjacent to The Strand.
- L. Stationary sidewalk vendors shall not operate on The Strand.
- M. Sidewalk vendors shall not operate on any portion of the public beach westerly of the easterly line of The Strand, or the City's Municipal Pier, unless authorized in connection with a special event permit or pursuant to Municipal Code Section 12.08.260.
- N. Vending carts shall not be chained, fastened, or affixed at any time to any building or structure, including, but not limited to lampposts, parking meters, traffic signals, fire hydrants, benches, bus shelters, trash cans, street signs, trees, fences, railings, or objects within the public right-of-way. No vending cart shall become a permanent fixture on the vending site or be considered an improvement to real property.
- O. Vending carts shall not be left unattended or stored on public property or within the public right-of-way.
- P. Vendors shall not deposit or dump anything into the water or onto the beach. No vendor on the pier shall use, or block the public's access to sinks or drains.

6.24.100 Administrative Citations.

- A. A violation of this chapter by a sidewalk vendor who has a valid sidewalk vending permit from the City is punishable only by an administrative citation pursuant to Chapter 1.06, in amounts not to exceed the following:
 - 1. \$100 for a first violation.
 - 2. \$200 for a second violation within one year of the first violation.
 - 3. \$500 for each additional violation within one year of the first violation.

- B. A person engaged in sidewalk vending without a valid City sidewalk vending permit is punishable by an administrative citation pursuant to Chapter 1.06 in amounts not to exceed the following, in lieu of the amounts set forth in paragraph A:
1. \$250 for a first violation.
 2. \$500 for a second violation within one year of the first violation.
 3. \$1,000 for each additional violation within one year of the first violation.
 4. Upon proof of a valid sidewalk vending permit issued by the City, the administrative citations set forth in this paragraph shall be reduced to amounts set forth in paragraph A.
- C. A violation of this chapter shall not be punishable as an infraction or misdemeanor. No person alleged to have violated the provisions herein shall be subject to arrest except when otherwise permitted by law.
- D. Failure to pay an administrative citation issued pursuant to this section shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized herein shall not be assessed.
- E. When assessing administrative citations pursuant to this section, the hearing officer shall take into consideration the person's ability to pay the fine. The City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.
- F. If the person meets the criteria described in subdivision (a) or (b) of Government Code Section 68632, the City shall accept, in full satisfaction, twenty percent of an administrative citation imposed pursuant to this chapter.
- G. The hearing officer may allow a person to complete community service in lieu of paying the total administrative citation, may waive the administrative citation, or may offer an alternative disposition."

Section 3. Manhattan Beach Municipal Code Section 3.68.020E (Definitions) is hereby amended to clarify that the definition of "Vending vehicle" does not include "vending carts" operated by sidewalk vendors in compliance with the City's sidewalk vending program, to read as follows:

"E. "Vending vehicle" means any self-propelled, motorized device or vehicle by which any person or property may be propelled or moved upon a highway, excepting a device moved exclusively by human power, such as a vending cart

operated by a sidewalk vendor pursuant to Chapter 6.24, or which may be drawn or towed by a self-propelled, motorized vehicle, from which food or food products are sold, offered for sale, displayed, bartered, exchanged or otherwise given.”

Section 4. Manhattan Beach Municipal Code Section 12.48.070 (Commercial Activities) is hereby amended to provide that sidewalk vendors operating with a valid sidewalk permit in compliance with Chapter 6.24 may conduct commercial activities in City parks, to read as follows:

“Other than sidewalk vending activities conducted in compliance with Chapter 6.24, commercial activities, including, but not limited to vendors, caterers, and peddlers, including vendors, caterers and commercial enterprises associated with permitted, organized groups, shall be prohibited in all City parks unless a permit is obtained from the Director of Parks and Recreation. Nothing in this section shall prohibit the Director of Parks and Recreation from awarding a franchise for special events to a particular caterer or vendor.”

Section 5. Manhattan Beach Municipal Code Section 14.36.030 (Unlawful parking—Peddlers, vendors) is hereby repealed in its entirety.

Section 6. 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 7. Internal Consistency. Any provisions of the Municipal Code, or any other resolution or ordinance of the City, to the extent that they are inconsistent with this Ordinance are hereby repealed, and the City Clerk shall make any necessary changes to the Municipal Code for internal consistency.

Section 8. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 9. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall constitute a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinance.

Section 10. Effective Date. This ordinance is adopted as an urgency ordinance pursuant to Government Code Section 36937(b), and shall be in full force and effect immediately upon its adoption by a four/ fifths vote of the City Council.

PASSED, APPROVED, AND ADOPTED December 18, 2018.

STEVEN A. NAPOLITANO
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney