



STAFF REPORT
2/14/2024

TO: Honorable Mayor and City Council Members

FROM: Gabriel Perez, Development Services Director

SUBJECT: Adopt Ordinance No. 1209 “Sidewalk Vendor Regulations” and Resolution No. 2024-02 “Sidewalk Vendor Application Fee” – proposed amendments to Sections 5.04.380, 8.040.010, and 12.04.030 of the Coachella Municipal Code and adding Chapter 12.50 to the Coachella Municipal Code Amendments regarding sidewalk vending regulations in compliance with Senate Bill 946. City-Initiated

STAFF RECOMMENDATION:

Staff recommends that the City Council adopt Ordinance No. 1209 recommending that the City Council approve amendments to the Coachella Municipal Code (C.M.C.) Sections 5.04.380, 8.040.010, and 12.04.030 and adding Chapter 12.50 related to establishment of sidewalk vendor regulations. Additionally, staff recommends that the City Council adopt Resolution No. 2024-02 establishing an application fee for sidewalk vendor permits.

BACKGROUND:

In 2018, the California Legislature passed Senate Bill 946 (SB 946) which prohibits cities from regulating sidewalk vendors, except in accordance with the provisions of SB 946. SB 946 applies to both charter and general law cities. SB 946 prohibits local governments from imposing criminal penalties for sidewalk vending, except SB 946 did not affect the applicability of the California Retail Code, commencing at Health and Safety Code section 113700. SB 946 authorizes the implementation of time, place, and manner regulations that are directly related to objective health, safety, or welfare concerns, and that do not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. Staff worked with the City Attorney’s office to develop a draft ordinance to amend the Coachella Municipal Code (C.M.C).

SB 946, in effect January 1, 2023, created a new category for “compact mobile food operation,” as a mobile food facility that operates from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack or other nonmotorized conveyance and permits a range of food preparation activity including heating, frying, baking, roasting, shaving of ice, blending, steaming of hot dogs or assembly of non-prepackaged food.

On October 14, 2020, the City Council considered Ordinance No. 1154 and continued the item to a date uncertain with the understanding that a study session would be held after 2022 elections in

order to develop a more holistic approach to sidewalk vending and information on what surrounding cities are approaching the topic <https://coachellaca.new.swagit.com/videos/10142020-1037>. The City Council held a study session on March 8, 2023 regarding sidewalk vendor regulations and provided the following recommendations on the draft ordinance:

- Prioritize safety, ADA issues, City permit issuance, and need for food handler certificate for vendors that sell food.
- Remove need for livescan background check by Police
- Remove need for commercial liability policy
- Remove need for a CA Seller's permit
- Require a Food handler permit in-lieu of a requirement for a County Health Permit
- Reevaluate draft restriction for a location of a vendor 30 ft distance from street and highway intersections and propose other alternatives.

A community forum was held on September 26, 2023 which consisted of a mix of advocates for sidewalk vendors and brick and mortar businesses concerned with the impact of sidewalk vendors on their businesses. A second City Council study session was held on October 25, 2023 and the Council directed that the item be reviewed and considered by the Planning Commission. The Planning Commission held a Study Session on the draft Sidewalk Vendor Ordinance on November 15, 2023, heard testimony from the public and provided feedback to staff. The Planning Commissioners individually or collectively discussed:

- Ensure that general liability insurance be included as a requirement for a side sidewalk vendor permit similar to the City's regulations for ice cream vendors.
- A lower permit fee for sidewalk vendors that are residents of the City of Coachella and a fee for vendor from outside the City of Coachella as high as \$2,500.
- Identify ways to limit renewals of sidewalk vendor permits with the expectation that sidewalk vendors can transition their businesses brick and mortar facilities.
- Reduce sidewalk vendor ordinance violation warnings to one (1) warning before fines are administered.
- The City establish a pathway for sidewalk vendors to a brick and mortar facility.

On January 17, 2024 the Planning Commission considered the ordinance at a public hearing and recommended that the City Council adopt the ordinance with modifications, which include:

- Application fee reflect annual cost of doing business.
- Reduce number of warnings to one warning,
- Address concerns that relate to operating generators in City right of way.

DISCUSSION/ANALYSIS:

By definition in the statutes, a Sidewalk Vendor means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or non-motorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. SB 946 also takes into consideration a Roaming Sidewalk Vendor which means a sidewalk vendor who moves

from place to place and stops only to complete a transaction. Both sidewalk vendors and roaming sidewalk vendors are currently not permitted businesses in the C.M.C. as the sale of food and merchandise in commercial, mixed-use and industrial zones are limited primarily to improved private properties with enclosed buildings with restroom facilities, parking and related landscaping, with the exception of ice cream truck businesses. The sale of food and merchandise in residential zones is subject to the following:

- **Home Occupations**: Home Occupations ordinance C.M.C. [Chapter 17.58](#) that limits all operations to within the dwelling, does not permit display of merchandise or advertising sign and prohibits commercial vehicles for delivery of materials to and from residence.
- **Cottage Food Operations**: The sale of food at a residence is further regulated by the City's Cottage Food Operation Ordinance of C.M.C. [Chapter 17.89](#) that requires allows for sale of home-kitchen prepared food on an [approved cottage food list](#) by the California Department of Public Health directly to the public or indirectly through restaurants and food markets that meet requirements of the California Health and Safety Code. Requirements include:
 - The business must have a Cottage Food Permit from the County and City.
 - City business license.
 - The business applicant must be resident at the home.
 - 600-foot distance from another cottage food operation unless an exception is granted at a public hearing to allow a separation distance of 200 feet from another cottage food operation.
 - Advertising signs not permitted.
- **Microenterprise Home Kitchen Operations**: AB 626, effective January 1, 2019. allows Microenterprise Home Kitchen Operations (MHKO) where home cooks can apply for a permit to sell food made in their home kitchen directly to the public with no more than 30 meals per day or 60 meals per week. The City has not adopted a local ordinance for MHKOs. Requirements include:
 - A [MHKO permit](#) issued by the Riverside County Health Department
 - Food Safety Manager Certification by the operation owner
 - Riverside County Food Handler Certification for all others involved with the MHKO.
 - Advertising signs not permitted.
- **Ice Cream Truck Businesses**: Ice cream truck businesses are permitted in [C.M.C. Chapter 5.34](#) that allow sales from a motor vehicle upon a city street to the public of prepackaged ice cream bars, popsicles, paletas, and similar frozen items subject to the following requirements:
 - Obtain a City of Coachella Ice Cream Truck Operator's Permit, County of Riverside health inspection sticker, Valid California Driver's license, Insurance policy, Background check
 - 300-foot distance of vending from schools or churches during school and church operating hours (and 30 minutes before and after operating hours)
 - Prohibited vending in parking lot of a park, playground or recreational facility.
 - Hours of Operation: 9 a.m.- 8 p.m. November 1-March 31, 9 a.m. – 9 p.m. April 1-October 31.
 - Trash receptacle required

Senate Bill 946 prohibits cities from prohibiting businesses to sell merchandise and food in the public realm in both sidewalks and parks, but allow cities to regulate these businesses with regulations that are directly related to objective health, safety, or welfare concerns. Only ice cream truck operators have been permitted by the City to operate in all Zoning districts in the public right of way according to City regulations adopted in 2011. The City drafted an ordinance based on of time, place, and manner regulations that are directly related to objective health, safety, or welfare concerns. The following table identifies what the City can and cannot regulate.

Table 1: Sidewalk Vendor Ordinance Parameters under California State Law

City <u>Cannot</u> Regulate	City <u>Can</u> Regulate
<ul style="list-style-type: none"> • Prohibiting all sidewalk vending • Imposing a requirement due to economic competition concerns • Requiring a sidewalk vendor to obtain approval from a nongovernmental entity 	<ul style="list-style-type: none"> • Hours of operation • Reasonable sanitation requirements • Compliance with Americans with Disabilities Act • Requiring a sidewalk vending permit and a business license • Requiring a California Dept of Tax and Fee Administration's seller's permit • Requiring additional licenses from state or local agencies such as County Health Permits <ul style="list-style-type: none"> • Requiring submission of information on vendor's proposed operations

City of Coachella Draft Sidewalk Vendor Ordinance

The attached Ordinance includes “permit requirements” that are consistent with SB 946, as they are reasonable, related to objective health, safety, and welfare concerns, and are based upon compliance with other generally applicable laws including the Americans with Disabilities Act and the City of Coachella’s (“City”) general encroachment permit requirements for work and/or activities in the public right of way. The standards imposed on stationary sidewalk vendors requiring a minimum path of accessible travel are necessary to comply with the Americans with Disabilities Act and maintain minimum safe access along public sidewalks.

In the 2020 draft Ordinance, staff proposed a cap at fifty (50) vendors and that it was related objectively to health, safety, and welfare concerns as having many sidewalk vendors has impacts to traffic, pedestrian safety, mobility, unsanitary conditions involving food preparation, risks to children, and consumer protection. Specifically, placing a cap of fifty (50) sidewalk vendors was intended to help ensure that driveways and street intersections throughout the City are kept clear and unobstructed. Staff no longer recommends that a cap be established for vendors in the ordinance.

Sidewalk Vendor Permit Requirement

The 2020 draft Ordinance required that Sidewalk Vendors obtain a Sidewalk Vendor Permit and would require a business license, California seller’s permit, Driver’s License or Tax ID Number

or Municipal ID number, County Health Department permit, General Liability Policy of \$1,000,000, operations site plan, and livescan background check. The current ordinance would remove the livescan background requirement.

Permitted Locations for stationary vendors

While the proposed Ordinance prohibits all stationary vendors from vending in residential zones, roaming vendors would be allowed to vend anywhere in the City along a public right-of-way (that has a sidewalk), as long as they comply with the requirements of the proposed Ordinance. The stationary vendor would need to operate on an improved area and would not be able to operate in the public right of way on dirt lots without improved parking that would potentially create an unsafe condition for pedestrians and vehicle traffic. Staff recommends the following for permitted locations of stationary sidewalk vendors:

- Permitted in non-residential zones and mixed-use zones.
- Maintain 36 inches of accessible path of travel.
- Building entrances and private driveways/parking may not be blocked at a distance of a minimum of 25 feet.
- Not permitted within 10 feet of a fire hydrant, fire escape, bus stop, loading zone, or handicapped parking space.
- 40 feet away from street and highway intersections to avoid conflicts with pedestrians crossing at intersections.
- Not within 150 feet of farmer's market, swapmeet or temporary event permit.
- Public or street parking or private parking must be within 500 feet of the vending area.
- 300-foot distance from schools when in session and 30 minutes before and after schools are in session. This distance requirement would be similar to the ice cream truck operator requirement.
- 200-foot distance from freeway onramps.
- City Park regulations include:
 - Stationary and roaming sidewalk vendors must be at least 50 feet away from another sidewalk vendor.
 - prohibited in any City Park with a concession stand operated by a vendor under exclusive contract with the City selling similar food or merchandise or in an area occupied by a Certified Farmer's Market.

Standards for maintaining access to building entrances, and not blocking driveways, fire hydrants, parking areas and building storefront windows are necessary to guard the health and safety of patrons, drivers, vendors and existing business owners and promote fire suppression and law enforcement practices that allow the City's safety personnel to observe activities within buildings and maintain access.

Staff has summarized other notable Sidewalk Vending requirements in the draft Ordinance in Table 2 below.

Table 2: Other Sidewalk Vendor Draft Ordinance Requirements

Stationary Sidewalk Vendors	Roaming Sidewalk Vendors
<ul style="list-style-type: none"> • Conducted between 5:00 a.m. and 11:00 p.m. everyday • Maintain vending area in clean, orderly and sanitary condition • No tables, chairs, fences shade structures permitted with vending activities • Exterior storage prohibited • No discharge of liquid into City streets, storm drains, catch basins, or sewer facilities. 	<ul style="list-style-type: none"> • Sidewalk vending hours for residential zones shall be conducted between the hours of 7:00 a.m. and 6:00 p.m. • Sidewalk vending hours for non-residential zones shall be conducted between the hours of 5:00 a.m. and 11:30 p.m. of every day • The sidewalk vendor does not conduct sales from a public street.

The proposed Ordinance clarifies the City’s own authority to enforce its Environmental Health Code. Absence of sidewalk vending regulations in the City’s Municipal Code would continue the status quo, which currently prevents the City from enforcing any regulation or impose a licensing requirement on the vendor.

Sidewalk Vendor Permit Fee

A resolution to establish a sidewalk vendor fee has been prepared. Staff has assessed the expenses associated with processing a sidewalk vendor fee and the fully burdened costs are calculated to be \$303.24 for the sidewalk vendor permit and \$166.12 for annual permit renewals. Staff recommends that the fee be reduced to \$125 for a sidewalk vendor permit and \$100 for permit renewals for Coachella Valley residents. Staff recommends that the sidewalk vendor permit for vendors from outside the Coachella Valley be \$300 and permit renewals at \$165. All business operating in the City of Coachella are also required to obtain a \$164 City of Coachella Business Registration Certificate. The Planning Commission recommended the fee structure as recommended by staff and that the fee increase annually with the consumer price index.

Other Sidewalk Vendor Approaches

Brick and mortar restaurant business owners in the City of Coachella have expressed concern to City officials and staff about an unfair competitive advantage that Sidewalk Vendors would have with respect to lower overhead for facility costs (rents, building construction, taxes, maintenance), permitting, regulation compliance, worker’s compensation, and location restrictions. Though the City of Coachella is limited in its ability under State Law to limit Sidewalk Vendors to only time, place, and manner regulations that are directly related to objective health, safety, or welfare concerns, the City is working diligently in developing more small business development opportunities to create a pipeline for street vendors who are interested in scaling their business and growing into brick and mortar facilities. The City recently applied for the Community Resilience Center (CRC) State grant to obtain \$10 million to rehabilitate the recently acquired 17,800 sq. ft. “Hidden Harvest” building into a resilience center and small business incubator that would include business development services by the Talent Foundry, a state-of-the-art commercial kitchen, coworking space, and potential building space to incubate their business. The City will be informed if the grant is awarded by April of 2024. The City also received notice of an award of

\$22 million for the Strategic Growth Council (SGC) Transformative Climate Communities (TCC) Program that could be used to further enhance a pathway for sidewalk vendors into brick and mortar facilities.

ALTERNATIVES:

- 1) Adopt Ordinance No. 1209 recommending that the City Council approve amendments to the Coachella Municipal Code (C.M.C.) Sections 5.04.380, 8.040.010, and 12.04.030 and adding Chapter 12.50 related to establishment of sidewalk vendor regulations; and Adopt Resolution No. 2024-02 establishing a sidewalk vendor application fee.
- 2) Adopt Ordinance No. 1209 recommending that the City Council approve amendments to the Coachella Municipal Code (C.M.C.) Sections 5.04.380, 8.040.010, and 12.04.030 and adding Chapter 12.50 related to establishment of sidewalk vendor regulations **with amendments**; and Adopt Resolution No. 2024-02 establishing a sidewalk vendor application fee.
- 3) Recommend denial of the proposed amendments and application fee.
- 4) Continue this item and provide staff with direction.

RECOMMENDED ALTERNATIVE(S):

Staff recommends Alternative #1 as noted above.

Attachments:

1. Ordinance No. 1209 Sidewalk Vendor Ordinance
2. Resolution No. 2024-02 Sidewalk Vendor Application Fee
Exhibit A – Sidewalk Vendor Fee Analysis
3. Comparison of Coachella Valley City Sidewalk Vendor Ordinances
4. Draft Sidewalk Vendor Ordinance with redlines
5. Senate Bill 946 - Sidewalk Vendors
6. Senate Bill 972 – California Retail Code
7. Inland Coalition for Immigrant Justice letter
8. City of Coachella Zoning Map
9. Map of Potential Sidewalk Vendor Locations