

**DRAFT COACHELLA MUNICIPAL CODE AMENDMENTS
RELATED TO REGULATION OF SIDEWALK VENDORS; ORDINANCE NO. 1209**

SECTION 1. Subsection P of Section 5.04.380 of the Coachella Municipal Code is hereby amended to read as follows (Deleted text in ~~strike~~through, new text is underlined):

“P. Itinerant Merchant. An itinerant merchant under this chapter shall be deemed to mean and include any person or persons, firm or corporation, either principle or agent, employer or employee who engages in a temporary business in the city by selling or offering for sale goods, wares, merchandise, or things or articles of value for a period of not more than one hundred ninety (190) days in any calendar year, and who, for the purpose of carrying on such business, hires, leases or occupies any room, building, structure or stand on any real property or on or adjoining any street or public place in the city. The person, firm or corporation so engaged shall not be relieved from the provisions of this subsection by reason of associating temporarily any local dealer, trader, merchant or auctioneer, or by reason of conducting such temporary business in connection with or as part of any local business, or in the name of any local dealer, trader, merchant or auctioneer. Such definition shall not include any person who sells, offers to sell, operates, engages in, or carries on a food or merchandise vending business from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one’s person, upon a public sidewalk, property, or other pedestrian path in compliance with Chapter 12.50 of Title 12 of this Municipal Code.”

SECTION 2. Subsection Q of Section 5.04.380 of the Coachella Municipal Code is hereby amended to read as follows (Deleted text in ~~strike~~through, new text is underlined):

“Peddler. "Peddler" shall be defined as any person who sells and makes immediate delivery or offers for sale and immediate delivery any goods, wares, merchandise, service or thing in the possession of the seller, at any place in the city other than at a fixed place of business, but shall not include salesmen or agents for wholesale houses or firms who sell to retail dealers for resale or sell to manufacturers for manufacturing purposes or to bidders for public works or supplies. It shall include the use of a "pushcart," which shall be defined as any wagon, cart or similar wheeled container, not a "vehicle" as defined in the Vehicle Code of the state of California, from which food, beverage, or product is offered for sale to the public. Such definition shall not include any person who sells, offers to sell, operates, engages in, or carries on a food or merchandise vending business from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one’s person, upon a public sidewalk, property, or other pedestrian path in compliance with Chapter 12.50 of Title 12 of this Municipal Code.

The chief of police shall, based upon the information supplied by the finance department, investigate the backgrounds of all applicants. If such investigation by the chief of police reveals that the applicant has been convicted of a crime involving moral turpitude or any crime of a nature associated with the type of business for which the application is submitted, he or she shall notify the director of finance, who shall deny the license application.”

SECTION 3. Subsection Q of Section 5.04.380 of the Coachella Municipal Code is hereby amended to read as follows (Deleted text in ~~strickethrough~~, new text is underlined):

“Solicitor. "Solicitor" shall be defined as any person who engages in the business of going from house to house, place to place, on or along the streets within the city and/or by telephone selling or taking orders for or offering to sell or take orders for goods, wares, or merchandise or other things of value for future delivery, or for services to be performed in the future. Such definition shall not include any person who sells, offers to sell, operates, engages in, or carries on a food or merchandise vending business from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one’s person, upon a public sidewalk, property, or other pedestrian path in compliance with Chapter 12.50 of Title 12 of this Municipal Code.”

SECTION 4. Subsection B of Section 12.04.030 of the Coachella Municipal Code is hereby amended to read as follows (Deleted text in ~~strickethrough~~, new text is underlined):

“B. It is also unlawful for any person to make, or cause to be made, any obstruction on, or any encroachment upon any city street, sidewalk, or other public place without first obtaining from the city engineer, a written permit to make such obstruction and making a deposit to cover the inspection and restoring of such city street or other place to its original condition, together with the incidental expenses in connection therewith, all as provided by this chapter. This sub-section applies to stationary sidewalk vendors who have obtained a permit pursuant to Chapter 12.50 of this title.”

SECTION 5. Chapter 12.50 is hereby added to the Coachella Municipal Code to read as follows:

“Chapter 12.50 – SIDEWALK VENDING.

Section 12.50.010 Purpose.

The City finds that the vending of prepared or pre-packaged foods, goods, and/or wares at semi-permanent locations on public sidewalks and rights-of-way may pose unsafe conditions and special dangers to the public health, safety, and welfare of residents and visitors. The purpose of this Chapter is to implement regulations on both roaming and stationary sidewalk vending that protect the public health, safety, and welfare of the community while complying with the requirements of general state law, as amended from time to time, to promote safe vending practices, prevent safety, traffic, and health hazards, and preserve the public peace, safety, and welfare of the community. In light of the City’s many public right-of-ways which lack adequate width in paved roadways and lack sidewalk and street lighting improvements, it is intended that all street vending occur in a safe manner to avoid injury to the public.

Section 12.50.020 Definitions.

For purposes of this Chapter, the following definitions apply:

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.

B. “City” means the City of Coachella.

C. “Park” means a public park owned or maintained by the City.

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

E. “Sidewalk vendor or vending” means a person who sells, offers to sell, operates, engages in, or carries on a food or merchandise vending business from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one’s person, upon a public sidewalk, property, or other pedestrian path.

F. “Stationary Sidewalk vendor or vending” means a sidewalk vendor who vends from a fixed location.

G. “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.

H. “Temporary Event Permit” means a special event permit or other planning director authorization for seasonal events, holiday celebrations, outdoor display of merchandise, promotional events, or other non-recurring temporary sales / entertainment activity, pursuant to Title 17 of this code.

Section 12.50.030 Permits Required.

A. All sidewalk vendors shall obtain a business license from the City’s finance director or designee, prior to engaging in any sidewalk vending activities. In addition to the required business license, all sidewalk vendors shall obtain a sidewalk vending permit from the City’s Finance Director or designee prior to engaging in any sidewalk vending activities. The following information shall be required for a sidewalk vending permit:

1. Name, current mailing address, and phone number of the vendor; and,
2. If the vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal; and,
3. A description of the merchandise/goods to be offered for sale or exchange, and the days/hours of sales; and,
4. A copy of the California seller’s permit with the sales tax number issued by the California Department of Tax and Fee Administration to the vendor; and,

5. A copy of the valid California Driver's license issued to the vendor; or,

A copy of the individual taxpayer identification number issued to the vendor; or,

A passport or residency card.
 - a. Any such identification number(s) or license(s) collected shall not be available to the public for inspection and shall remain confidential and 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.
6. If preparing or selling food, a copy of the County Health Department permit issued to the vendor; and,
7. If preparing or selling food, a current decal sticker issued by the County Health Department to be posted on any food cart used in vending; and,
8. A description or site plan map of the proposed location(s) where vending will take place, showing that the sidewalk location maintains a minimum of thirty-six inches (36") of accessible route area, in compliance with the Americans with Disabilities Act; and,
9. A copy of general liability policy naming the City as additional insured in the amount of \$1,000,000; and,
10. A certification by the vendor that to his or her knowledge and belief, the information contained in the application is true.

B. At the time the application or renewal application is filed, the application shall pay the permit processing fee established by separate resolution of the City Council.

Section 12.50.040 Review of Permit Application; Decision.

A. Upon acceptance of a properly completed and filed sidewalk vendor permit application the City Manager's designee shall conduct a preliminary investigation to determine compliance with this Chapter and shall make such determination within no more than thirty (30) days of acceptance to approve or deny the application. The City Manager's designee shall provide the applicant with written notice of his or her decision to the address indicated in the application.

B. If the application is denied, the reasons for disapproval shall be noted on the application, and the applicant shall be notified that his or her application is denied and that no permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form.

C. If the City Manager’s designee approves the applicant's permit, he or she shall endorse his or her approval on the application and shall, upon payment of the prescribed fee, deliver the permit to the applicant.

D. Exemptions. A sidewalk vending permit shall not be required for the following activities:

1. The sale of agriculture products on the site where the product is grown.
2. Catering for private parties held exclusively on private property and not open to the general public.
3. Events permitted pursuant to a lawfully issued temporary event permit including but not limited to a Certified Farmers’ Market, Swap Meet, street fairs, outdoor concerts, promotional event, and outdoor display of merchandise.

4. First Amendment protected vending which includes the following:

- a. Traditional expressive speech and petitioning activities, such as vending the following items: newspapers, leaflets, pamphlets, bumper stickers, patches, and/or buttons.
- b. Vending the following items which have been created, written, or composed by the vendor: books, audio, video, or other recordings of their performances, paintings, photographs, prints, sculptures, or any other item that is inherently communicative and is of nominal value or utility apart from its communication.
- c. Those items that have a common and dominant non-expressive purpose shall not be considered a vending item that has been “created, written, or composed by the vendor,” such as, but not limited to, housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfume, crystals, lotions, candles, jewelry, toys, and stuffed animals. Selling these types of dominant non-expressive merchandise will require a sidewalk vending permit under this Chapter.
- d. Performers can perform.
 - (i) The word “perform” shall mean to engage in any of the following activities: playing musical instruments, singing, dancing, acting, pantomiming, puppeteering, juggling, reciting, engaging in magic, creating visual art in its entirety, presenting or enacting a play, work of music, work of art, physical or mental feat, or other constitutionally protected entertainment or form of expression.

(ii) The word “perform” shall not include the provision of personal services such as massage or hair weaving, cutting, or styling, the completion or other partial creation of visual, the creation of visual art at which is mass produced or produced with limited variation, or the creation of handcrafts.

(iii) The word “handcrafts” shall mean objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, and beading, including objects such as jewelry, pottery, silver work, leather goods, and trinkets that do not communicate a message, idea, or concept to others.

e. Any sidewalk vendor conducting lawful First Amendment protected vending under subsections (E)(4)(a)-(b), above, shall still be required to comply with any applicable tax and licensing requirements.

E. Term of permit. A sidewalk vending permit issued pursuant to this Chapter shall automatically expire one (1) year from the date issued, unless an earlier expiration date is noted on the permit.

F. Transferability. A sidewalk vending permit shall not be transferable to any other entity or person and is valid only as to the original applicant for the term stated.

Section 12.50.050 Stationary Sidewalk Vending Locations and Standards.

A. Stationary sidewalk vendors shall be prohibited from operating or establishing in any residential zone of the City, including the S-N (Suburban Neighborhood) zone, G-N (General Neighborhood) zone, U-N (Urban Neighborhood) zone, and all residential districts of the SP (Specific Plan) zone.

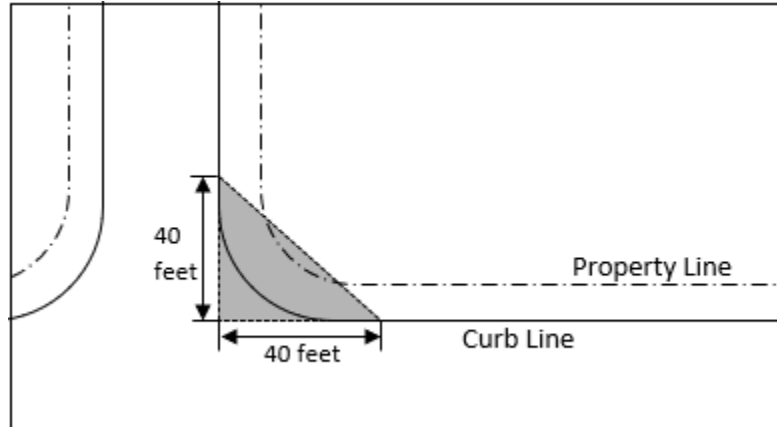
B. Stationary sidewalk vendors may operate in non-residential zones of the City, including mixed use zones, provided they meet the following:

1. The sidewalk vendor is duly licensed and meets all requirements of section 12.50.030; and,
2. The sidewalk vendor can set up their vending operation while still leaving a minimum of thirty-six inches (36”) of accessible path of travel, without obstruction, along the public sidewalk or public pathway; and,
3. If the sidewalk vendor is selling food, the sidewalk vendor shall display a valid Health Permit issued by the County in a conspicuous location on any food cart; and

4. If the sidewalk vendor is selling food, all employees shall possess a current food handler's card, issued by the County; and
5. Sidewalk vending hours shall be conducted between the hours of 5:00 AM and 11:00 PM every day; and,
6. The sidewalk vendor maintains the vending area in a clean, orderly, and sanitary condition; and,
7. The sidewalk vendor location shall be at a minimum distance of twenty-five (25) feet of entrances to buildings, private driveways, fire station driveway, or police station driveway ; and,
8. No vending shall occur within ten (10) feet of a fire hydrant, fire escape, bus stop, loading zone, building windows, parking spaces, handicapped access ramp,; and,
9. No tables, chairs, fences, shade structures, other site furniture, or any freestanding signs shall be permitted in conjunction with the vendors vending activities; and,
10. The vendor shall not attach or use any water lines, electrical lines, or gas lines during vending operations; and,
11. Exterior storage or display of refuse, equipment, materials, goods, wares, or merchandise associated with the vendor is prohibited; and,
12. No vending shall occur within one hundred fifty (150) feet of a Certified Farmers' Market, a Swap Meet, or an event held pursuant to a Temporary Event Permit; and,
13. No vending shall occur within two hundred (200) feet of a freeway onramp or off-ramp.
14. No vending shall occur within three hundred (300) feet of a any school during the hours these schools are in session (and thirty (30) minutes before or after these schools are in session).
15. The sidewalk vendor shall not discharge any liquid (e.g., water, grease, oil, etc.) onto or into the City streets, storm drains, catch basins, or sewer facilities. All discharges shall be contained and properly disposed of by the sidewalk vendor; and
16. The sidewalk vendor may not operate on any street right-of-way or sidewalk where street parking or public parking is not available within 500 feet of the vending area, or where off-street parking on private property is not available within 500 feet of the vending area; and

17. No vending shall occur within a corner cutoff area. A corner cutoff area is that area at all intersecting and intercepting streets or highways. The cutoff line shall be in a horizontal plane, making an angle of forty-five (45) degrees with the side, front, or rear property line, as the case may be. It shall pass through the points located on both sides and front or rear property lines at a distance of forty (40) feet from the intersection of such lines at the corner of a street or highway.

Figure 1: Corner Cut-off limitations for Sidewalk Vendors



Section 12.50.060 Sidewalk Vending in Parks, Certified Farmer’s Markets.

A. Sidewalk vending of food or merchandise by stationary vendors shall be 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.

B. Sidewalk vendors may operate in City Parks provided they meet the following:

1. The sidewalk vendor is duly licensed and meets all requirements of section 12.50.030; and,
2. For stationary sidewalk vending, the sidewalk vendor can set up their vending operation while still leaving a minimum of thirty-six inches (36”) of accessible path of travel, without obstruction, along the public sidewalk or public pathway; and,
3. The sidewalk vendor shall cease operations one (1) hour prior to the close of the park; and,
4. The sidewalk vendor maintains the vending area in a clean, orderly, and sanitary condition; and,
5. If the sidewalk vendor is selling food, the sidewalk vendor shall display a valid Health Permit issued by the County in a conspicuous location on any food cart; and

6. Any sidewalk vendor food cart shall possess a current decal sticker posted on the food cart; and
7. The sidewalk vendor location shall be at a minimum distance of twenty (25) feet from entrances to buildings, driveways, parking spaces, or building windows; and,
8. No vending shall occur within one hundred fifty (150) feet of an event held pursuant to a Temporary Event Permit.
9. The sidewalk vendor shall not discharge any liquid (e.g., water, grease, oil, etc.) onto or into City streets, storm drains, catch basins, or sewer facilities. All discharges shall be contained and properly disposed of by the sidewalk vendor.
10. All stationary and roaming sidewalk vendors must be at least 50 feet away from another sidewalk vendor, except that groups of five or fewer sidewalk vendors may assemble as one group not occupying more than 2,000 square feet of combined area, for purposes of limiting undue concentration. At no time shall there be more than ten sidewalk vendors at any one City Park without a temporary use permit.
11. No vending shall occur within a corner cutoff area. A corner cutoff area is that area at all intersecting and intercepting streets or highways. The cutoff line shall be in a horizontal plane, making an angle of forty-five (45) degrees with the side, front, or rear property line, as the case may be. It shall pass through the points located on both sides and front or rear property lines at a distance of forty (40) feet from the intersection of such lines at the corner of a street or highway.

Section 12.50.070 Roaming Sidewalk Vending.

- A. Roaming sidewalk vendors shall meet the following:
 1. The sidewalk vendor is duly licensed and meets all requirements of section 12.50.030; and,
 2. Sidewalk vending hours for residential zones shall be conducted between the hours of 7:00 AM and 6:00 PM; and,
 3. Sidewalk vending hours for non-residential zones shall be conducted between the hours of 5:00 AM and 11:00 PM of every day; and,
 4. The sidewalk vendor maintains their temporary vending area in a clean, orderly, and sanitary condition; and
 5. The sidewalk vendor does not block entrances to buildings, driveways, parking spaces, or building windows; and

6. The sidewalk vendor does not conduct sales from a public street.
7. No vending shall occur within the immediate vicinity of a Certified Farmers' Market, a Swap Meet, or an event held pursuant to a Temporary Event Permit.
8. No vending shall occur within a corner cutoff area. A corner cutoff area is that area at all intersecting and intercepting streets or highways. The cutoff line shall be in a horizontal plane, making an angle of forty-five (45) degrees with the side, front, or rear property line, as the case may be. It shall pass through the points located on both sides and front or rear property lines at a distance of forty (40) feet from the intersection of such lines at the corner of a street or highway.

Section 12.50.080 Suspension; Rescission.

A. A sidewalk vendor permit issued under this Chapter may be suspended or rescinded by the City Manager's designee after four or more violations of this Chapter in accordance with Section 12.50.100 of this Chapter, at their discretion, for any of the following causes:

1. Fraud or misrepresentation in the course of vending;
2. Fraud or misrepresentation in the application for the permit;
3. Vending in a manner that creates a public nuisance or constitutes a danger to the public.

B. Notice of the suspension or rescission of a sidewalk vendor permit issued under this Chapter shall be mailed, postage prepaid, to the holder of the sidewalk vendor permit at his or her last known address.

C. No person whose street vending permit has been revoked pursuant to this Chapter shall be issued a street vending permit for a period of two (2) years from the date revocation becomes final.

Section 12.50.090 Appeals to City Manager.

In the event that any applicant or permittee desires to appeal from any order, rescission, or other ruling of the City Manager's designee made under the provisions of this Chapter, such applicant or any other person aggrieved shall have the right to appeal such action or decision to the City Manager within fifteen (15) days after the notice of the action or decision has been mailed to the person's address as shown on the permit application. An appeal shall be taken by filing with the Economic Development Director or designee a written appeal statement setting forth the grounds for the appeal, along with the City's appeal fee for administrative reviews. The filing of the appeal

shall stay the enforcement of any decision suspending or rescinding the permit. The Economic Development Director shall transmit the written statement to the City Manager within ten (10) days of its filing and payment of the appeal fee, and the City Manager shall set a time and place for a hearing on appeal. A hearing shall be set not later than sixty (60) days from the date of filing of the applicant's written appeal statement with the police department. Notice of the time and place of the hearing shall be given to the appellant in the same manner as provided for the mailing of notice of suspension or rescission at least ten (10) days prior to the date set for the hearing. At the hearing, the permittee and the City shall be entitled to legal representation and may present relevant evidence, testify under oath, and call witnesses who shall testify under oath. The City Manager shall not be bound by the traditional rules of evidence in a hearing, except that hearsay evidence may not be the sole basis for the decision of the City Manager. The City Manager may continue the hearing as deemed necessary. The decision of the City Manager, or his or her designee, on the appeal shall be final and binding on all parties concerned.

Section 12.50.100 Penalties.

A. It is unlawful for any person to violate any provision or fail to comply with any requirements of this Chapter. A violation of this Chapter shall be punished by:

1. An administrative fine not exceeding \$100 for a first violation after one written warning has been issued by the City of Coachella Code Enforcement.
2. An administrative fine not exceeding \$200 for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding \$500 for each additional violation within one (1) year of the first violation.

B. A violation of vending without a sidewalk vending permit, may, in lieu of the penalties set forth in subsection (A), set forth above, be punished by:

1. An administrative fine not exceeding two hundred fifty (\$250) dollars for a first violation after one written warning has been issued by the City of Coachella Code Enforcement.
2. An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one (1) year of the first violation.

C. If an individual is subject to subsection (B), set forth above, for vending without a sidewalk vending permit, upon the individual providing proof of a valid permit issued by the City,

the administrative fines set forth in this Chapter shall be reduced to the administrative fines set forth in subsection (A), respectively.

D. The proceeds of any administrative fines assessed pursuant to this Chapter shall be deposited in the treasury of the City.

E. Failure to pay an administrative fine assessed under this Chapter shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in this Chapter shall not be assessed.

F. Any violation of this Chapter shall not be punishable as an infraction or misdemeanor, and any person alleged to have violated any provisions of this Chapter shall not be subject to arrest except when otherwise permitted under law.

G. When assessing an administrative fine pursuant to this Chapter, the adjudicator 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.

1. 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 (20) percent of the administrative fine imposed pursuant to this Chapter.
2. The City 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.

H. 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 SB 946 had SB 946 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.

I. Nothing contained herein shall be construed to impede the City's or County's ability to enforce County Health Department codes, regulations, and ordinances."

SECTION 6. Section 8.04.010 of the Coachella Municipal Code is hereby amended to read as follows:

"City and County enforcement of state regulations and statutes.

The city council consents and requests that, in addition to the City's own authority to enforce and observe, the county health officer of the county of Riverside, state of California, shall also be authorized to enforce and observe all of the following:

A. Orders, quarantine regulations, and rules prescribed by the state department and other rules and regulations issued under the provisions of the California Health and Safety Code.

B. Statutes relating to the public health.

Such services shall continue indefinitely until the city council shall terminate them by adoption of a resolution or ordinances, as provided in Division I, Part II, Chapter I, Article 2, of the Health and Safety Code. Each reference to the county, enforcement officer, and enforcement agency in this Title 8 of the Coachella Municipal Code shall be interpreted to equally be referencing the City and its authorized employees and agents.