



Folsom City Council Staff Report

MEETING DATE:	3/23/2021
AGENDA SECTION:	New Business
SUBJECT:	Ordinance No. 1312 – An Ordinance of the City of Folsom Adding Chapter 12.24 to the Folsom Municipal Code Pertaining to Sidewalk Vendors (Introduction and First Reading)
FROM:	City Attorney's Office

RECOMMENDATION / CITY COUNCIL ACTION

Staff respectfully recommends that the City Council conduct Introduction and First Reading of Ordinance No. 1312 – An Ordinance of the City of Folsom Adding Chapter 12.24 to the Folsom Municipal Code Pertaining to Sidewalk Vendors.

BACKGROUND / ISSUE

Senate Bill 946, which went into effect on January 1, 2019, prohibits local governments from regulating sidewalk vendors except as specifically permitted by SB 946. In passing SB 946, the State Legislature declared that sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities, increases access to desired goods (such as culturally significant food and merchandise), contributes to a safe and dynamic public space, and promotes safety and welfare of the general public by encouraging local authorities to support and properly regulate sidewalk vending.

Certain sidewalk vendors are currently operating in the City, and this Ordinance is prepared to establish reasonable time, place and manner regulation pertaining to sidewalk vending activities consistent with SB 946.

POLICY / RULE

The City Council is vested with authority to adopt Ordinances pursuant to Section 2.12 of the Folsom City Charter. Amendments to the Folsom Municipal Code require approval of the City Council.

ANALYSIS

With some limited exceptions, SB 946 prohibits local governments from preventing sidewalk vending from operating within specific parts of the public right-of-way, except when the restriction is directly related to objective health, safety, or welfare concerns. A local government can adopt requirements such as regulating the time, place and manner of sidewalk vending to the extent they are directly related to objective health, safety, and welfare concerns; however, these restrictions cannot be unduly restrictive. For example, local government cannot impose stricter hours of operation on a sidewalk vendor than it would impose on other businesses or uses along the same street.

State law does allow local governments to require a license or permit for sidewalk vending, hence the proposed Ordinance sets forth the requirements for sidewalk vendors to obtain a Sidewalk Vendor Permit from the Community Development Department prior to operating on sidewalks in the City. There are various standards that a sidewalk vendor must abide by, and failure to abide by the standards results in a citation and administrative fines that are set by State law. The fines increase for each offense, up to suspension or revocation of the Sidewalk Vendor Permit after 4 repeated violations in a year. Any sidewalk vendor has the right under SB 946 to request a hearing to contest the administrative fines or an “ability-to-pay” determination.

The proposed standards are narrowly tailored to address health, safety and welfare concerns in the City consistent with State law. For example, sidewalk vendors are required to:

1. Maintain a 5-foot wide clear path of travel on sidewalks for compliance with the California Building Code and to ensure accessible, clear passage for disabled persons or those with wheelchairs.
2. Maintain sanitary conditions for food and perishable items in compliance with all applicable state and county food and health regulations.
3. Provide a trash receptacle for patrons and keep the area clean during operation and upon leaving.
4. Not obstruct vehicular and pedestrian visibility at intersections.
5. Not vend on a sidewalk within the immediate vicinity of a construction zone or traffic control area, or within 50 feet of a business or restaurant selling same or similar food or merchandise.
6. Not use lights, horns, or music as part of vending activity.
7. Not sell alcohol, lottery tickets, cannabis, tobacco, electronic cigarettes, adult-oriented materials, or drugs of any kind.

8. Not vend within the immediate vicinity of special events or farmers markets, or places where a concessionaire has an exclusive concessionaire agreement with the City to sell food or merchandise.

This Ordinance would not apply to residents selling food or merchandise in front of their residence such as, for example, lemonade stands or garage sales. The Ordinance also would exempt residents selling food or merchandise to support non-profit charitable organizations such as the sales of Girl Scout cookies.

FINANCIAL IMPACT

This action is not expected to have a significant impact to the City's General Fund.

ENVIRONMENTAL REVIEW

This action is not considered a project under Section 15061(b)(3) of the California Environmental Quality Act Guidelines, and as such is exempt from environmental review.

ATTACHMENT

1. Ordinance No. 1312 – An Ordinance of the City of Folsom Adding Chapter 12.24 to the Folsom Municipal Code Pertaining to Sidewalk Vendors (Introduction and First Reading)

Respectfully submitted,

Steven Wang, City Attorney

ORDINANCE NO. 1312

**AN ORDINANCE OF THE CITY OF FOLSOM
ADDING CHAPTER 12.24 TO THE FOLSOM MUNICIPAL CODE
PERTAINING TO SIDEWALK VENDORS**

The City Council of the City of Folsom does hereby ordain as follows:

SECTION 1 PURPOSE

The purpose of this Ordinance is to add Chapter 12.24 to the Folsom Municipal Code to set forth reasonable time, place and manner regulations pertaining to sidewalk vendors pursuant to Senate Bill 946.

SECTION 2 FINDINGS

The City Council finds that the proposed Ordinance directly relates to objective health, safety, and welfare concerns and incorporates permit requirements and regulations for sidewalk vendors consistent with state law. The Ordinance focuses on regulations to ensure the protection of the public's health, safety, and welfare. Requiring that sidewalk vendors maintain accessible paths of travel on sidewalks is consistent with leading pedestrian disability and access travel guides which require no less than four feet of clear width for accessible travel, including (1) the American Association of State Highway and Transportation Officials' Guide for the Planning Design and Operation of Pedestrian Facilities, which recommends a minimum clear width for a sidewalk of four feet (AASHTO, 2004, Sec. 3.2.3); (2) the Institute of Transportation Engineers' Design and Safety of Pedestrian Facilities, which recommends residential sidewalk clearance widths ranging from four feet to five feet and for commercial areas a sidewalk width minimum of five feet; and (3) the Federal Highway Administration's Designing Sidewalks and Trails for Access: Best Practices and Design Guide Part 2, which recommends a minimum width of five feet of sidewalk that is free of obstacles (FHWA, 2001, Ch.4). In addition, the 2016 California Building Code, Section 11B-403.5.1(3) requires a clear width for sidewalks and walks of a minimum of four (4) feet. Overall, the proposed Ordinance objectively serves the health, safety, and welfare of the public by assuring the community of clear paths on sidewalks, including individuals with wheelchairs or with extra accessibility requirements and needs. Further, the proposed Ordinance would not allow sidewalk vendors to set up within the immediate vicinity of construction zones or traffic-controlled areas, would reduce any potential conflicts between the vending operations and the construction zone or other controlled traffic area that could otherwise result in accidents or injury. Providing regulations within the guidelines of the State law will directly relate to objective health, safety, and welfare concerns and promote economic opportunity for people to support themselves and their families. None of these proposed regulations will be detrimental to the public interest, health, safety, convenience, or welfare of the City as they implement State law.

SECTION 3 ADDITION TO CODE

Chapter 12.24 is hereby added to the Folsom Municipal Code to read as follows:

Chapter 12.24

SIDEWALK VENDORS

Sections:

- 12.24.010 Finding and purpose.**
- 12.24.020 Definitions.**
- 12.24.030 Prohibitions.**
- 12.24.040 Exceptions.**
- 12.24.050 Sidewalk Vendors.**

12.24.010 Finding and purpose.

Regulation of the sale of merchandise or food upon public sidewalks within the City of Folsom is necessary for the purpose of promoting free and safe pedestrian traffic and access, and is directly related to the objective health, safety, and welfare of the public. The City Council hereby finds that the use of such public rights-of-way for such purposes in violation of the prohibitions of this Chapter would constitute an interruption of the free and safe pedestrian traffic and access and pose a serious and dangerous hazard to the public.

12.24.020 Definitions.

The following words and phrases are defined for purposes of this Chapter as follows:

“Food” means any type of edible substance or beverage.

“Merchandise” means any tangible thing or item that is not food.

“Person or persons” means one or more natural person, individuals, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnerships, entities, associations, clubs or organizations composed of two or more individuals (or the manager, lessee, agent, officer or employee of any of them), whether engaged in business, non-profit 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” means any right-of-way within the City of Folsom improved for public pedestrian traffic, including paved walks and pathways.

“Sidewalk vendor” means natural person(s) or individual(s) who sell food or merchandise 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 or other pedestrian path.

“Stand” means any fixed, temporary, permanent or mobile rack, counter, shelving, vehicle or other structure or device utilized for the purpose of transporting, storing, carrying or displaying merchandise or food for the purpose of vending.

“Stationary Sidewalk Vendor” means a Sidewalk Vendor who vends from a fixed location. A Sidewalk Vendor who stops at any given location for longer than it takes to complete a transaction shall be deemed a Stationary Sidewalk Vendor.

“Vend” or “vending” means to sell, offer for sale, expose or display for sale, solicit offers to purchase, or to barter food or merchandise, or to require someone to negotiate, establish or pay a fee before providing food or merchandise, even if characterized as a donation.

12.24.030 Prohibitions.

Except as otherwise provided by this Chapter, no person shall engage in the vending of food or merchandise on public sidewalks or in public parks in the City of Folsom. Sidewalk vending on public sidewalks or in public parks in the City of Folsom may only occur in compliance with the regulations set forth in this Chapter.

12.24.040 Exceptions.

The provisions of this Chapter shall not be applicable to or deemed to prohibit:

- A. The placement of newspaper racks upon sidewalks; or
- B. The vending of food or merchandise upon sidewalks in the City of Folsom under a current and valid permit issued by the City such as, for example, a conditional use permit, special event permit, outdoor dining permit, or encroachment permit; or
- C. The vending of food or merchandise by residents in front of their residence such as, for example, lemonade stands or garage sales; or
- D. The vending of food or merchandise by residents in the City in neighborhoods to support non-profit charitable organizations such as, for example, the sale of Girl Scout cookies.

12.24.050 Sidewalk Vendors.

A. Permit Required. No person or persons will be allowed to vend food or merchandise upon sidewalks within the city limits without first obtaining a City of Folsom Business License, as well as a Sidewalk Vendor Permit from the Community Development Department. A Sidewalk Vendor Permit is required for each Sidewalk Vendor.

B. Application Requirements. The application for a Sidewalk Vendor Permit shall include:

- 1. The name and current mailing address of the Sidewalk Vendor.

2. A description of the food or merchandise offered for sale or exchange.
3. A copy of the California seller's permit number (CA Department of Tax and Fee Administration sales tax number), if the applicant is required to have a seller's permit.
4. A copy of valid Sacramento County Health Department permit, if food is being vended.
5. If the Sidewalk Vendor is an agent, representative, contractor, or employee of an individual, company, partnership, business, person, or corporation, the name and business address of such principal must be included on the application.
6. Certification by the applicant that to his or her knowledge and belief, the information contained in the application is true.
7. Payment of an application fee established and adjusted from time to time by City Council Resolution.

C. Health, Safety, and Welfare Regulations.

1. Sidewalk Vendors shall not hinder or obstruct the free passage of pedestrians along a sidewalk or block the entrance into any place of business. This includes maintaining a clear path of travel on the sidewalk of not less than five feet wide in compliance with the Americans with Disabilities Act (ADA), free and clear of any obstacles including, but not limited to, tents, chairs, customer queuing, signage, pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other motorized or non-motorized conveyance, or merchandise.
2. Sidewalk Vendors are not permitted to locate on a sidewalk within the immediate vicinity of a construction zone or traffic-controlled area for construction purposes of any kind, or within 50 feet of a business or restaurant selling same or similar food or merchandise.
3. Sidewalk Vendors shall not obstruct vehicular and pedestrian visibility at intersections.
4. Sidewalk Vendors may not use lights, horns, or music as part of vending activity.
5. Sidewalk Vendors may not sell alcohol, lottery tickets, cannabis, tobacco, electronic cigarettes, adult-oriented materials, or drugs of any kind.
6. Stationary Sidewalk Vendors may not operate in residential zoning districts.
7. A Roaming Sidewalk Vendor engaged in sidewalk vending shall only stop for the time reasonably necessary to complete a transaction.
8. Sidewalk Vendors are not permitted to operate within the immediate vicinity of an area designated for a temporary use permit issued by the City for temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit,

special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, events, or outdoor concerts. A prohibition of sidewalk vending pursuant to this subsection shall only be effective for the limited duration of the temporary use permit.

9. No Sidewalk Vendor may operate within the immediate vicinity of an area where another person has a concessionaire agreement with the City that exclusively permits the sale of food or merchandise by the concessionaire.

10. Sidewalk Vendors are not permitted to operate in areas within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. 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. A "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.

11. Sidewalk Vendors shall provide a trash receptacle for patrons to dispose of any trash, as well as ensure that the area is kept clean during hours of operation and upon leaving the location.

12. Sidewalk Vendors shall maintain sanitary conditions appropriate for the food and perishable items offered for sale, in compliance with all applicable state and county food and health regulations.

13. Sidewalk Vendors may operate only during the time similar to the hours of operation of nearby businesses on the same street. If operated in City parks, Sidewalk Vendors may operate only during the hours when the park is open to the public.

14. Sidewalk Vendors shall comply with all applicable laws and license requirements.

D. Enforcement.

1. A Sidewalk Vendor who is issued a citation in violation of this Section shall be subject to the following fines:

a. Vending which violates a requirement of this Section, other than failure to possess a valid Sidewalk Vendor Permit:

i. An administrative fine of \$100.00 for a first violation.

ii. An administrative fine of \$150.00 for a second violation within one year of the first violation.

iii. An administrative fine of \$200.00 for each additional violation within one year of the first violation.

iv. A violation occurring after 12 consecutive months with no violation shall be considered a first violation.

v. A Sidewalk Vendor Permit may be revoked or suspended for the remainder of its term upon a fourth or subsequent violation.

b. Vending without a valid Sidewalk Vendor Permit:

i. An administrative fine of \$250.00 for a first violation.

ii. An administrative fine of \$500.00 for a second violation within one year of the first violation.

iii. An administrative fine of \$1,000 for each additional violation within one year of the first violation.

iv. A violation occurring after 12 consecutive months with no violation shall be considered a first violation.

v. The administrative fines listed in this subsection shall be reduced from \$250.00 to \$100.00, \$500.00 to \$150.00 and \$1,000 to \$200.00 upon obtaining a valid Sidewalk Vendor Permit from the Community Development Department within 10 calendar days of the citation.

2. Additional fines, fees, assessments, or any other financial conditions beyond those authorized by subsection (D)(1) of this Section shall not be assessed.

3. When assessing an administrative fine pursuant to subsection (D)(1) of this Section, the Community Development Director, or his or her designee, shall take into consideration the Sidewalk Vendor's ability to pay the fine based upon a sworn statement and good cause, which demonstrates the Sidewalk Vendor's inability to pay the assessed administrative fine. Good cause shall exist where the Sidewalk Vendor shows that he or she cannot pay the administrative fine amount without using moneys that normally would pay for the common necessities of life for the Sidewalk Vendor and the Sidewalk Vendor's family. Notice shall be given to the Sidewalk Vendor 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 Sidewalk Vendor may request an ability-to-pay determination at the adjudication stage or after such adjudication during the time the fine remains unpaid, including when a fine is delinquent or has been referred to collection. If the Sidewalk Vendor meets the criteria set forth herein, the City shall accept, in full satisfaction, 20 percent of the total administrative fine amount imposed pursuant to subsection (D)(1) of this Section.

4. Any Sidewalk Vendor may request a hearing to contest the administrative fine assessed pursuant to subsection (D)(1) of this Section, and/or contest an ability-to-pay determination. Any request for a hearing must be filed in writing with the Community Development Department within 10 calendar days of the issuance of the administrative fine or ability-to-pay determination,

whichever applies. Failure to timely request a hearing constitutes a waiver of the right to appeal and a failure to exhaust administrative remedies.

a. **Hearing Date.** The hearing officer shall set the date for the hearing and determination. The hearing dates shall not be less than 30 days, nor more than 60 days, after the date on which the copy of the notice of appeal was submitted to the Community Development Department.

b. At the hearing, the contesting party shall be given the opportunity to testify and to present evidence concerning the penalty.

c. **Hearing Officer's Decision.** After considering the testimony and evidence presented at the hearing, the hearing officer shall issue a decision to uphold, dismiss or modify the administrative fine. The hearing officer shall state the reasons for the decision and, if in writing, shall send a copy of the decision to the person that requested the hearing and to the enforcement officer. The decision of the hearing officer is final, and may not be appealed.

d. All fines owed after the hearing officer's decision are due within 30 days of the decision. The City may use all procedures available to it to collect any unpaid fee.

SECTION 4 SCOPE

Except as set forth in this Ordinance, all other provisions of the Folsom Municipal Code shall remain in full force and effect.

SECTION 5 NO MANDATORY DUTY OF CARE

This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 6 SEVERABILITY

If any section, subsection, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council declares that it would have passed each section irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared unconstitutional, invalid, or ineffective.

SECTION 7 EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This Ordinance was introduced and the title thereof read at the regular meeting of the City Council on March 23, 2021, and the second reading occurred at the regular meeting of the City Council on April 13, 2021.

On a motion by Council Member _____ seconded by Council Member _____, the foregoing Ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this ____ day of _____, 2021 by the following roll-call vote:

- AYES: Councilmember(s):
- NOES: Councilmember(s):
- ABSENT: Councilmember(s):
- ABSTAIN: Councilmember(s):

Michael D. Kozłowski, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

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