

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 TO ADD CHAPTER 5.106, AND AMENDING CHAPTER 5.08, SECTION 5.08.280 OF THE STOCKTON MUNICIPAL CODE REGARDING STREET AND SIDEWALK VENDOR REGULATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION I. FINDINGS AND INTENT.

On, or about, September 17, 2018, the California Legislature approved, and the Governor signed, Senate Bill 946, which created new provisions for the licensing, activities, and enforcement regulations relating to Street and Sidewalk Vendors throughout the State, regardless of whether the City is a General Law or Chartered City. The provisions created by this Bill prohibit a municipality from forbidding Street and Sidewalk Vendors from operating, with certain exceptions, in public parks and upon public sidewalks. The Bill also authorizes municipalities to assess licensing rules and other regulations to ensure Street and Sidewalk Vendors comply with other State and Local licensing authorities. With an ever-growing number of Street and Sidewalk Vendors operating within the City since the new laws took effect, the City Council finds it necessary to incorporate these rules and regulations to ensure vendors are providing their services in a safe and sanitary manner, safeguard the health and safety of the general public being served by vendors, and create standards to protect public resources.

The proposed creation of this Chapter, and amendment of other existing code, will bring the City into compliance with changes in State Law, give Street and Sidewalk Vendors clear and concise direction for providing their services in accordance with State and Local regulations, and provide methods to preserve the public's health, safety and enjoyment of public grounds where vendor activities occur. The provisions of this ordinance are intended to ensure compliance with Senate Bill 946 (signed into law on September 17, 2018).

SECTION II. AMENDMENT OF CODE.

Title 5, Chapter 5.106, titled, "STREET AND SIDEWALK VENDORS" is added to the Stockton Municipal Code and shall read as follows:

5.106.010 Purpose.

- A. The purpose of this Chapter is to clearly provide persons that conduct, or plan to conduct, sidewalk and street vending operations with business license requirements pursuant to the State of California Government Code, section 51038, and other licensing requirements as provided in Title 5 of the Stockton Municipal Code (SMC).
- B. Street and Sidewalk Vendor operational requirements and regulations are located in SMC 8.70 et seq.

5.106.020 Definitions.

The definitions herein are for the purpose of clarifying terms as they may appear within this Chapter.

"Business" means and includes professions, trades, and occupations and all and every kind of calling whether or not carried on for profit.

"Compact mobile food operation" means a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

"Designated Location" shall mean a specific location on a public sidewalk, park, or venue which has been allocated a permit by the City of Stockton for exclusive use in a vending operation.

"Food" shall mean any type of edible substance or beverage.

"Merchandise" shall mean any tangible item or good that is not food.

"Park" shall mean the grounds areas of any public park, recreational facility, or venue owned or operated by the City of Stockton.

"Permit" shall mean a permit or license issued by the City of Stockton authorizing a vendor to conduct business within the city limits.

"Person or persons" shall mean one (1) or more natural persons, individuals, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs or organizations composed of two (2) 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.

"Street" shall mean the portion of any county, state or public road or highway within the City of Stockton, which is utilized for motor vehicle or bicycle traffic, including any improved shoulder adjacent to traffic lanes.

"Sidewalk" shall mean any surface in the public right-of-way intended for use by pedestrians, including walkways and pathways.

"Sidewalk/Street vendor" shall mean a person who sells 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, pedestrian path, or park, including all roaming sidewalk vendors, stationary sidewalk vendors and compact mobile food operations.

"Stationary sidewalk vendor" shall mean a sidewalk vendor who vends from a fixed location.

"Roaming vendor" shall mean a sidewalk vendor who moves from place to place and stops only long enough to complete a transaction.

"Vend" or "vending" means the sale of any goods, wares, merchandise, prepared, prepackaged, or unprepared, unpackaged food or foodstuffs of any kind from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk, other pedestrian path, or park.

"Vendor" shall mean any person, business, organization, or establishment that sells merchandise or food products on the public right-of-way or a park. This includes any peddler as defined in SMC 5.08.260.

"Vendors permit or license" shall mean a permit issued pursuant to the provisions of this Chapter to engage in sidewalk, street, or park vending activities.

"Venue" shall mean any location or operation owned by or operated by the City of Stockton.

5.106.030 Application.

- A. A person desiring to engage in a vendor operation, as defined by this Chapter, shall submit a written application in a form acceptable to and with all supporting information required by the City of Stockton pursuant to SMC 5.04, Article II and Article III.
- B. Such application shall be accompanied by a nonrefundable, nontransferable application fee in an amount as established by resolution of the City Council. Any such permit shall be required to be renewed annually and a separate nonrefundable, nontransferable application fee shall be paid yearly for such renewal application. Vendors must have the permit in their possession when vending. There must be at least one vendor with a valid permit on-site whenever vending is taking place.

- C. A vendor must obtain a background check in pursuant to SMC 5.08.260.
- D. If the vendor is going to be operating in a park or a venue owned or operated by the City of Stockton, the vendor shall submit an indemnification statement in a manner approved by the City of Stockton Finance Department, releasing the City of any liability in conjunction with the vending operation.
- E. If the vendor is going to be operating in a park, the vendor shall pay a Public Property Use Fee pursuant to SMC 8.70.050.
- F. In addition to the above, pursuant to State of California Government Code, section 51038, at the time of application, a vendor shall submit the following:
 - 1. A valid State of California Department of Tax and Fee Administration seller's permit.
 - 2. The name and current mailing address of the sidewalk vendor.
 - 3. A description of the merchandise offered for sale or exchange.
 - 4. A copy of a current San Joaquin County Environmental Health Department permit.
 - 5. A certification by the vendor that to his or her knowledge and belief, the information contained on the license application form is true.
 - 6. If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.
 - 7. If a social security number is obtained for business license purposes, the number collected shall not be available to the public for inspection, is confidential, and shall 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.

5.106.040 Regulations for sales.

It is unlawful for any person to vend, or attempt to engage in vending, or conduct any business for the purpose of vending from any sidewalk, park, or other venue without having obtained a business license.

5.106.050 Applicability of regulations to existing business.

The provisions of this chapter shall be applicable to all persons and businesses described herein whether the herein described activities were established before or after the effective date of the ordinance codified in this chapter.

5.106.050 Violation and Penalty.

Pursuant to State of California Government Code, section 51038, the penalty for violations of this Section shall be as follows:

- A. An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.
- B. An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.
- C. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.
- D. Upon proof of a valid permit having been issued the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph A of this Section, respectively.
- E. Failure to pay an administrative fine 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 be prohibited.

5.160.060 Business License Revocation.

- A. A vendor's license may be revoked pursuant to the provisions set forth in SMC 5.04.220.
- B. A vendor's license may be revoked pursuant to SMC 8.70.110.A.4.

5.106.070 Ability to Pay Determination.

In accordance with the provisions set forth in Government Code, section 51039(f), the City of Stockton shall take into consideration of a person's ability to pay an administrative fine as follows:

- A. Any fine issued under this Chapter will be accompanied by a notice of and instruction regarding a person's right to request an ability-to-pay determination. A 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 collection program.
- B. If a person is receiving public benefits under California Government Code section 68632(a), or has a monthly income which is 125 percent or less than the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services, the person's administrative fine is limited to twenty (20) percent of the amount assessed.
- C. The City of Stockton may also take the following actions:
 - 1. Allow the person to complete community service in lieu of paying the total administrative fine.
 - 2. Waive the administrative fine.
 - 3. Offer an alternative disposition.

5.106.080 Administration and Enforcement.

- A. The provisions of this Chapter shall be administrated by the City of Stockton Finance Department.
- B. Compliance with the provisions of this Chapter may be enforced by the City of Stockton Police Department, Neighborhood Services Section.

SECTION III. AMENDMENT OF CODE.

Title 5, Chapter 5.08, Section 5.08.280 of the Stockton Municipal Code is hereby amended and shall read as follows:

5.08.280 Soliciting or peddling in public places—Times and place limitations.

A. It is unlawful for any person, firm, or corporation engaged in selling or distributing any goods, wares or services to stop, stand or park on or along a public street, sidewalk or public park other than as allowed in Chapter 8.70 of this Code or as permitted by Government Code section 51036.

B. Congestion. It is unlawful for any peddler or vendor to operate in a place where such operation will create a traffic hazard.

C. Exemption. This section shall not apply to the sale or distribution of any newspaper, flyer, or handbill.

(Prior code § 6-034.23)

SECTION IX. SEVERABILITY.

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

SECTION X. EFFECTIVE DATE.

This ordinance shall take full force and effect 30 days after its passage.

ADOPTED: _____

EFFECTIVE: _____

CHRISTINA FUGAZI
Mayor of the City of Stockton

ATTEST:

KATHERINE ROLAND, CMC, CPMC
City Clerk of the City of Stockton