

## **Chapter 12.46 SIDEWALK VENDING PROGRAM**

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### **12.46.010 Purpose and Findings.**

A. Purpose. The purpose of this chapter is to establish a sidewalk vendor permitting and regulatory program that complies with Senate Bill 946 (Chapter 459, Statutes 2018). The provisions of this chapter bring the City into compliance with Senate Bill 946 by removing total prohibitions on sidewalk vending activities while still permitting regulation and enforcement of such activities. Sections 53036-53039 of the California Government Code confers upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The requirements set forth in this chapter are intended to protect the public's health, safety, and welfare by ensuring that vendors on public property provide safe and sanitary conditions for consumers and the general public, are adequately insured, are properly licensed with other agencies, and that the total number of allowed vending permits in the commercial and residential districts is limited. This chapter is adopted pursuant to the City's police powers for the purpose of regulating vending on public property.

B. Findings. The City Council hereby finds that limitations on sidewalk vending are necessary to:

1. Comply with State Legislation;
2. Promote the health, safety and welfare;
3. Ensure that the Goals and Policies of the City's General Plan are upheld;
4. Ensure that the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles is maintained;

5. Provide reasonable access for the use and maintenance of sidewalks, pathways, hydrants, restrooms, trash receptacles, firefighting apparatus, as well as access to locations used for public transportation services
6. Protect the quality of life of City residents and minimize disruptions to the quiet enjoyment of residential property by restricting noise- making devices associated with sidewalk vending;
7. Ensure no interference to the performance of police, firefighter, and emergency other medical personnel services;
8. Maximize public access in the commercial districts and along the coast; and
9. Reduce exposure to the City for personal injury or property damage claims and litigation.

C. The City Council hereby finds that the unique characteristics of the City require certain restrictions on sidewalk vending as follows:

1. The majority of the sidewalks and pathways in the City are under ten (10) feet wide and sidewalk vending in these areas would unreasonably interfere with the flow of pedestrians and disrupt access for persons with disabilities in compliance with the American with Disabilities Act (ADA);
2. The City's Commercial District and associated sidewalk areas are extremely popular tourist destinations with unusually high pedestrian and vehicular traffic volumes in which most of the segments of sidewalk are under ten (10) feet in width. A limit on the number of sidewalk vending permits issued by the City is necessary to protect the public from injury given the popularity of these tourist destinations and the narrow sidewalks;
3. The majority of the City's Residential District does not contain City-recognized sidewalks and pedestrian access is limited to the roadway. A limit on the number of sidewalk vending permits issued by the City is necessary to protect the public from injury given the lack of recognized sidewalks;
4. Devendorf Park is .60 acres in size and offers passive types of uses such as picnic. A limit on the number of sidewalk vending permits for Devendorf Park is necessary to promote public health, safety and welfare, and to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.
5. The Police Department and Fire Department contain critical infrastructure and restrictions around these facilities are necessary to ensuring health, safety and welfare of the public;

6. Carmel Beach is a coastal and scenic resource and restrictions of sidewalk vending on and around the beach are necessary to protect this resource;
7. The Scenic Pathway is a narrow dirt path located adjacent to Carmel Beach and is a popular tourist destination with high pedestrian traffic volumes. Restrictions on sidewalk vending along the path are necessary to protect the public from injury given the popularity of these tourist destinations and the multiple litigation experiences of the City pertaining to this area; and
8. Mission Trail Nature Preserve is natural resource designated as an environmentally sensitive habitat area. Restrictions of sidewalk vending at this location are necessary to preserve this natural resource.

#### **12.46.020 Definitions**

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter. Words and phrases not defined by this chapter have the meaning set forth elsewhere in this Code, the California Business and Professions Code, California Vehicle Code, or California Government Code.

- A. "Beach" means any public oceanfront, or bay front beach within the City.
- B. "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, or any successor chapter.
- C. "City" means the City of Carmel-by-the-Sea.
- D. "Code" mean the City of Carmel-by-the-Sea Municipal Code.
- E. "Commercial District" means any area zoned exclusively as commercial in Title 17 of the Municipal Code.
- F. "Devendorf Park" means the park space located at the northwest corner of Junipero and Ocean Avenues, excluding the sidewalks around the park grounds.
- G. "Food" means any item provided in Health and Safety Code Section 113781, or any successor section.
- H. "Harassment" mean any form of unauthorized or unpermitted touching, verbal abuse, blockage of pathways or interference with pedestrian traffic.
- I. "Human Powered Device" shall mean any device moved by human power, including, but not limited to, a pushcart, wagon, bicycle, tricycle, pedal-driver cart,

other non-motorized conveyance, or other wheeled container or mechanism, or from one's person.

- J. "Merchandise" means any item(s) that can be sold and immediately obtained from a sidewalk vendor, which is not considered food. Items for rent shall not be considered merchandise.
- K. "Owner" shall mean any person or entity owning, or otherwise controlling the operation of any business or activity involving Vending on Public Property.
- L. "Park" means public parkland located within City limits including Devendorf Park, Piccadilly Park, First Murphy Park, Forest Hill Park and Vista Lobos Park.
- M. "Public Property" shall mean any real property, public easement, public street, street median, alley, parkway, public sidewalk, or other interest therein owned, held, leased, operated or otherwise controlled by the City.
- N. "Residential District" means any area zoned exclusively as residential in Title 17 of the Municipal Code.
- O. "Roaming Sidewalk Vendor" shall mean a Sidewalk Vendor who moves from place to place and stops only to complete a transaction.
- P. "Service Business" means a commercial enterprise that provides work performed by an individual or team for the benefit of its customers.
- Q. "Scenic Pathway" means the dirt pathway located westerly and parallel to Scenic Road and adjacent to the beach.
- R. "Sidewalk" means that portion other than the roadway, set apart by curbs, barriers, markings or other delineation specifically.
- S. "Sidewalk Vendor" shall mean a person who vends goods or merchandise upon a public sidewalk, including, but not limited to vending from a structure, stand, display, showcase, rack, human powered device or other means.
- T. "Sidewalk vending receptacle" or "sidewalk vendor receptacle" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending activities.
- U. "Special Event" shall mean a City permitted event including, but not limited to, festivals, art shows, and/or cultural events.
- V. "Stationary Sidewalk Vendor" shall mean a sidewalk vendor who vends from a fixed location.
- W. "Vend" or "Vending" shall mean any act of hawking, operating noisemaking devices to attract attention to the vendor, or the displaying, selling, or offering for sale of

any displayed goods or merchandise to the public from any carrying device, box, bag, stand, human powered device, or from a vehicle.

#### **12.46.030 Permit Required**

A. No person, either for themselves or any other person, shall engage in any sidewalk vendor activities within the City without first applying for and receiving a permit from the Community Planning and Building Director, or the Director's designee, under this chapter. The permit fee shall be established by resolution of the City Council.

B. No more than ten (10) permits shall be issued by the City that allow sidewalk vending in the commercial or residential districts, including all city-owned parks other than Devendorf Park, in order to protect the public health, safety, and welfare. No more than one commercial/residential permit shall be issued to an individual sidewalk vendor and only one vending receptacle is permitted per permit.

C. No more than three (3) permits shall be issued by the City that allow sidewalk vending in Devendorf Park in order to prevent undue concentrations of commercial activity and protect the character of the park. No more than one Devendorf Park permit shall be issued to an individual sidewalk vendor and only one vending receptacle is permitted per permit.

D. Sidewalk vendor permits shall be issued in the order that they are received and deemed complete.

E. A written application for a sidewalk vendor permit shall be filed with the Community Planning and Building Director, or the Director's designee, on a form provided by the City, and at a minimum, shall contain the following information:

1. The name, address, and telephone number of the person applying to become a sidewalk vendor;
2. The name, address, and telephone number of the person who will be in charge of any roaming sidewalk vendors, sidewalk vending activity and/or be responsible for the person(s) working at the sidewalk vending receptacle;
3. The name, address, and telephone number of all persons that will be employed as roaming sidewalk vendors or at a sidewalk vending receptacle;
4. The location(s) in the City where the sidewalk vendor intends to operate;
5. The day(s) and hours of operation the sidewalk vendor intends to operate at such location(s);
6. Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor and, if roaming, the intended path of travel;

7. The dimensions of the sidewalk vendor's sidewalk vending receptacle(s), including a picture of each sidewalk vending receptacle operating under the permit and any signs that will be affixed thereto;
8. Whether the sidewalk vendor will be selling food, merchandise, or both;
9. If the sidewalk vendor is selling food, a description of the type of food to be sold, whether such foods are prepared on site, whether such foods will require a heating element inside or on the sidewalk vending receptacle for food preparation, and the type of heating element, if any;
10. If the vendor is selling merchandise, a description of the merchandise to be sold;
11. Proof of a valid Health permit issued by the Monterey County Health Department in accordance with Part 7 of the California Health and Safety Code, if Vending food;
12. Proof the person possesses a valid California Department of Tax and Fee Administration seller's permit which notes the City as a location or sub-location, which shall be maintained for the duration of the sidewalk vendor's permit;
13. An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, state, and federal laws;
14. A certification that, to their knowledge and belief, the information contained within the application is true;
15. An acknowledgement that the use of public property as authorized by State Legislation shall be at the sidewalk vendor's own risk, and the sidewalk vendor uses public property at their own risk;
16. An acknowledgement that the sidewalk vendor will obtain and maintain throughout the duration of any permit issued under this chapter, any insurance required by the City's Risk Manager and shall name the City as an also named insured under that policy;
17. Any other relevant information required by the Community Planning and Building Director, or the Director's designee; and
18. An agreement by the sidewalk vendor to defend, indemnify, release and hold harmless the City, its City Council, boards, commissions, officers and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or

indirectly) to the permit or the vendor's sidewalk vending activities. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee, City, and/or the parties initiating or bringing such proceeding.

F. Each application for a sidewalk vendor permit shall be accompanied by a non-refundable application fee as established by resolution of the City Council. The application and permit is only applicable to the individual(s) named on the application. If said permit is approved, the permittee shall also obtain a City business license to carry on the activities authorized by said permit.

#### **12.46.040 Issuance of Permit**

A. Within thirty (30) calendar days of receiving a complete application, the Community Planning and Building Director, or the Director's designee, may issue a sidewalk vendor permit, with appropriate conditions, as provided for herein, if he/she finds based on all of the relevant information that:

1. The conduct of the sidewalk vendor will not unduly interfere with traffic or pedestrian movement, or tend to interfere with or endanger the public peace or rights of nearby residents to the quiet and peaceable enjoyment of their property, or otherwise be detrimental to the public peace, health, safety or general welfare, nor shall it violate the ADA rules, restrictions and regulations;
2. The conduct of the sidewalk vendor will not unduly interfere with normal governmental or City operations, threaten to result in damage or detriment to public property, or result in the City incurring costs or expenditures in either money or personnel not reimbursed in advance by the vendor;
3. The conduct of such sidewalk vending activity will not constitute a fire hazard, and all proper safety precautions will be taken;
4. The conduct of such sidewalk vending activity will not require the diversion of police officers to properly police the area of such activity as to interfere with normal police protection for other areas of the City;
5. The sidewalk vendor has not had a permit revoked within the past twelve (12) months;
6. The sidewalk vendor's application contains all required information;
7. The sidewalk vendor has not made a materially false, misleading or fraudulent statement of fact to the City in the application process;

8. The sidewalk vendor has satisfied all the requirements of this chapter;
9. The sidewalk vendor has paid all applicable fees as set by City Council resolution;
10. The sidewalk vendor's sidewalk vending receptacle and proposed activities conform to the requirements of this chapter;
11. The sidewalk vendor has adequate insurance to protect the City from liability associated with the sidewalk vendor's activities, as determined by the City's Risk Manager, or the Risk Manager's designee, and, if required by the City, the City has been named as an additional insured; and
12. The sidewalk vendor has satisfactorily provided all information requested by the Community Planning and Building Director, or the Director's designee, to consider the vendor's application.

B. A sidewalk vendor permit is non-transferable. Any change in ownership or operation of a sidewalk vendor or sidewalk vending receptacle requires a new permit under this chapter.

C. Sidewalk vendor permits shall expire one year after issuance, unless renewed on or before the expiration date.

#### **12.46.050 Operating Conditions**

All sidewalk vendors are subject to the following operating conditions when conducting sidewalk vending activities:

A. All food and merchandise shall be stored either inside or affixed to the sidewalk vendor receptacle or carried by the sidewalk vendor. Food and merchandise shall not be stored, placed, or kept on any public property. If affixed to the sidewalk vendor receptacle, the overall space taken up by the sidewalk vendor receptacle shall not exceed the size requirements provided in this section and shall be in possession of a current Health and Safety permit issued by the Monterey County Health Department in accordance with Part 7 of the California Health and Safety Code and California Seller's Permit.

B. The sidewalk vendor permit shall be displayed conspicuously at all times on the sidewalk vending receptacle or the sidewalk vendor's person.

C. Only one sidewalk vendor is permitted to operate per permit.

- D. The sidewalk vendor shall submit a monthly report to the Community Planning and Building Department identifying the number of hours operated.
- E. Sidewalk vendors shall ensure that all required insurance is in effect prior to conducting any sidewalk vendor activities and maintained for the duration of the permit.
- F. Sidewalk vendors shall not leave their sidewalk vending receptacle unattended for any reason except for temporary use of the restroom.
- G. Sidewalk vending receptacles shall not be stored on public property and shall be removed from City property when not in active use by a sidewalk vendor.
- H. All sidewalk vendors shall allow a police officer, firefighter, life safety services officer, code enforcement officer, health inspector, or other government official charged with enforcing laws related to the street vendor's activities, at any time, to inspect their sidewalk vending receptacle for compliance with the size requirements of this chapter and to ensure the safe operation of any heating elements used to prepare food.
- I. Sidewalk vending receptacles and any attachments thereto shall not exceed a total height of forty-eight (48) inches, a total width of thirty-two (32) inches, and a total length of forty-eight (48) inches. An exception is provided for umbrellas or other means of cover and shall be no larger than the minimum required by the Monterey County Health Department; merchandise shall not be affixed to any cover.
- J. No sidewalk vending receptacle shall contain explosive or hazardous materials, other than propane necessary for heating purposes.
- K. Sidewalk vendors that sell food shall maintain a trash container in or on their sidewalk vending receptacle and shall not empty their trash into public trashcans. The size of the vendor's trash container shall be taken into account when assessing the total size limit of a sidewalk vending receptacle. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation.
- L. Sidewalk vendors shall immediately clean up any food, grease or other fluid or item related to sidewalk vending activities that is discharged on public property. Failure to comply will result in the City taking appropriate action to clean the discharge at the vendor's expense. The vendor permit will thereafter be suspended until such time as the expense associated with cleanup has been reimbursed to the City.
- M. Sidewalk vendors shall comply with all provisions of Chapter 8.68 [Environmentally Acceptable Materials] of this Code.
- N. Sidewalk vendors shall comply with the Federal Americans with Disabilities Act of 1990 and amendments thereto, and state disability rights laws.
- O. Sidewalk vendors shall maintain a minimum four (4) foot clear accessible path free from obstructions, including sidewalk vending receptacles and customer queuing area.

P. Sidewalk vendors shall not use any noise making devices in association with the sale, display or offering for sale of items, such as megaphones, bells, whistles, and the like.

Q. Sidewalk vendors shall comply with the noise standards provided in Chapter 8.56 of this Code, or any successor chapters.

R. In parks, sidewalk vendors shall not approach persons to sell food or merchandise.

S. All signage and advertising related in any way to the sidewalk vendor shall be attached to the sidewalk vending receptacle, if any, or the sidewalk vendor's person.

T. Sidewalk vendors shall not use any electrical, flashing, wind powered, or animated sign.

U. The sidewalk vendor is permitted a maximum of one sign not exceeding three (3) square feet in area; and no free-standing sign shall be placed on a public street or sidewalk.

#### **12.46.060 Prohibited Locations**

A. Sidewalk vendors shall not engage in sidewalk vending activities at the following locations:

1. Carmel Beach and the adjacent Scenic Pathway.
2. Mission Trail Nature Preserve.
3. Any public property that does not meet the definition of a sidewalk or pathway including, but not limited to, any alley, intra-block walkway, beach, square, street, street end, or parking lot.
4. Within one hundred (100) feet for the Police and Fire Departments.
5. Within fifty (50) feet of:
  - a. A permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet.
  - b. An area designated for a special event permit issued by the City, during the limited duration of the special event, if the City provides the sidewalk vendor any notice, business interruption mitigation, or other rights the City provided to any affected businesses or property owners under the City's special event permit.
  - c. The Del Mar Parking Lot including the adjacent sidewalks and restroom area.

6. Within twenty-five (25) feet of:

- a. The monuments located within Devendorf Park.
- b. Another sidewalk vendor.
- c. Any police officer, firefighter, lifeguard or emergency medical personnel who are actively performing their duties or providing services to the public.

7. Within five (5) feet of any:

- a. Business entrance and/or display window.
- b. Fire hydrant.
- c. Intersection of a street and a sidewalk.
- d. Curb which has been designated as white, yellow, blue, or red zone, or a bus zone.
- e. Driveway, alley, or entrance to a parking lot or parking garage.
- f. Trash receptacle, bike rack, bench, bus stop, restroom, or similar public use items.

8. Sidewalk vendors shall not sell food or merchandise or engage in any sidewalk vending activities on any portion of a commercial district sidewalk that has a width of less than ten (10) feet.

9. A sidewalk vendor may pass through narrower portions of commercial district sidewalk in order to reach their destination, but shall not conduct business on any portion of sidewalk that is less than ten (10) feet in width.

10. At any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire.

B. Stationary sidewalk vendors shall not operate in the residential zoning districts.

C. Sidewalk vending receptacles shall not touch, lean against or be affixed at any time to any building or structure including, but not limited to lampposts, fire hydrants, benches, bus shelters, newsstands, trashcans or traffic barriers.

## **12.46.070 Prohibited Activities**

A. Sidewalk vendors shall not engage in any of the following activities:

1. Renting merchandise to customers.
2. Providing a service that is neither defined a merchandise or food.
3. Displaying or advertising merchandise or food that is not available for immediate sale.
4. Selling of alcohol, cannabis, adult oriented material, tobacco products, products that contain nicotine or any product used to smoke/vape nicotine or cannabis.
5. Using an open flame or charcoal-fueled device on or within any sidewalk vending receptacle.
6. Using an electrical outlet or power source, or water sources, that is owned by the City or another person other than the sidewalk vendor.
7. Harassing customers as defined in Section 12.46.020 of this Code.
8. Knowingly making false statements or misrepresentations during the course of offering food or merchandise for sale.
9. Blocking or impeding the path of the person(s) being offered food or merchandise to purchase.
10. Touching the person(s) being offered food or merchandise without that person(s)' consent.
11. Placing their sidewalk vending receptacles outside of any pathway or sidewalk when engaging in sidewalk vending activities.
12. Conducting the retail sales of souvenirs, in accordance with Section 17.14.040.T.13 of this Code.
13. Operating as a formula food establishment, as defined in Section 17.70.020 of this Code.

B. Sidewalk vending is permitted during the following times:

1. Within the commercial districts, including any parks contained within these districts, between the hours of 8:00 a.m. and 9:00 p.m. daily.
2. Within residential districts, including any parks contained within these districts, between the hours of 9:00 a.m. and 6:00 p.m. daily.

### **12.46.080 Penalties**

A. As prescribed by State Legislation, violations of this chapter may not be prosecuted as infractions or misdemeanors and shall only be punished by the following administrative citation and revocation structure.

B. Except as otherwise provided in this chapter, any violation of this chapter shall be assessed administrative fines in the following amounts:

1. An administrative fine not exceeding one hundred dollars (\$100) for a first violation.
2. An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year of the first violation.

C. If a sidewalk vendor violates any portion of this chapter and cannot present the citing officer with a proof of a valid sidewalk vendor permit, the sidewalk vendor shall be assessed administrative fines in the following amounts:

1. An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.
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.

D. Upon proof of a valid sidewalk vendor permit issued by the City, the administrative fines set forth in Subsection 12.46.080.C shall be reduced to the administrative fines set forth in Subsection 12.46.080.B.

E. The Community Planning and Building Director, or the Director's designee, may revoke a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations within one (1) year of the first violation.

### **12.46.090 Appeals**

A. All appeals of administrative citations shall be conducted in accordance with Section 18.04.150 of this Code.

B. Decisions of the Community Planning and Building Director, or the Director's designee, to revoke a permit shall be appealed in the following manner:

1. Request for an appeal hearing shall be processed in accordance with Section

18.04.090 of this Code, or any successor section.

2. Decisions that are appealed shall not become effective until the appeal is resolved.
3. Appeals of decisions shall be made in writing on forms provided by the City.
4. All appeals of decisions shall be heard by a Hearing Officer designated pursuant to Section 18.04.110 of this Code.
5. The Hearing Officer may uphold or deny the decision and the decision of the Hearing Officer shall be final.