

SIDEWALK VENDING OPERATIONS PERMIT POLICY

Adopted by Encinitas City Council Resolution 2020-66 on September 9, 2020.

I. PURPOSE

The purpose of this Sidewalk Vending Operations Permit Policy (Policy) is to establish a program regulating the time, place and manner of sidewalk vending operations in the City of Encinitas in compliance with Senate Bill (SB) 946 (Cal. Govt. Code §§ 51036-51039). This Policy is intended to protect the public health, safety and welfare.

II. DEFINITIONS

For purposes of this Policy, the following definitions shall apply:

A. "Beach" means any City-owned and/or maintained and operated beaches, access ways and overlooks/viewpoints (with or without beach access) located within the City of Encinitas and all land, water, sidewalks, stairways, road improvements, parking lots and shore facilities related thereto.

C. "Business Registration Certificate" means a business registration certificate issued by the City of Encinitas pursuant to Encinitas Municipal Code (EMC) Title 6, authorizing an individual to conduct business within City limits.

D. "Director" means the City of Encinitas Development Services Director, or his or her designee.

E. "Emergency Vehicle Access" means the roadway, path or other surface that provides police, fire or marine safety vehicular access from the dispatched point of origin to a facility, building, parcel, Beach, Beach Access Way, Park, Pathway, or portion thereof. Emergency Vehicle Access includes, but is not limited to, fire lanes, public and private streets, parking lot lanes, access roadways, and walkways.

F. "Park" means any public developed, mini, neighborhood, viewpoint, community park and special use park, or any additional park space identified within the City's General Plan that is used for passive or active recreation.

G. "Pathway" means any paved or unpaved path or walkway owned by the City or other public entity that is specifically designed for pedestrian travel, other than a Sidewalk.

H. "Person" means and includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, business or common law trusts, societies, and individuals transacting and carrying on any business in the City.

I. "Residential" means any area zoned as residential in Title 30 of the Encinitas Municipal Code.

J. "Roaming Sidewalk Vendor" means a Sidewalk Vendor who moves from place to place and stops only to complete a transaction.

K. "Sidewalk" means that paved portion of a highway, other than the roadway, set apart by curbs, barriers, marking or other delineation specifically designed for pedestrian travel and that is owned by the City or other public entity.

L. "Sidewalk Vendor" means 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 or other pedestrian path.

M. "Sidewalk Vending Operations Permit" or "Permit" means a permit issued by the City of Encinitas to conduct Sidewalk vending operations in the jurisdiction of the City pursuant to and in compliance with this Policy.

N. "Sidewalk Vending Receptacle" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance approved by the City to be used for stationary or roaming sidewalk vending activities.

O. "Special Event" means any special event described in EMC Chapter 6.11, or any successor section.

P. "Stationary Sidewalk Vendor" means a Sidewalk Vendor who vends from a fixed location.

III. POLICY PROCEDURES

A. Required Approvals.

No Person, either for themselves or any other Person, shall engage in any Sidewalk vending operations within the City without first applying for and receiving the following approvals issued by the City:

1. Business Registration Certificate; and
2. Sidewalk Vending Operations Permit. The Director is the issuing authority for the Permit.

B. Permit Application.

1. An application for a Sidewalk Vending Operations Permit shall be signed under penalty of perjury and filed with the Director, on a form provided by the City. The Permit application shall contain all of the following information, which shall be updated when there is any change to ensure that the City has current information on file at all times relating to the Sidewalk Vendor and the Sidewalk vending operations:

- a. Legal name, address, telephone number, and website for the Sidewalk vending business
- b. Legal name, address, telephone number, and email address of the Person applying to become a Sidewalk Vendor;
- c. Legal name, address, telephone number, and email address of the Person who will be in charge of any Roaming Sidewalk Vendors, Sidewalk vending

operations and/or be responsible for the Person(s) working at the Sidewalk Vending Receptacle;

- d. Legal name, address, and telephone number of all Persons that will be employed under the Permit as Roaming Sidewalk Vendors or at a Sidewalk Vending Receptacle;
- e. The number of Sidewalk Vending Receptacles the Sidewalk Vendor will operate within the City under the Permit;
- f. Fingerprinting background check results by LiveScan or the Sheriff's Department, paid for by the applicant;
- g. Whether the Sidewalk Vendor intends to operate as a Stationary Sidewalk Vendor or a Roaming Sidewalk Vendor;
- h. Location(s) in the City where the Stationary Sidewalk Vendor intends to operate;
- i. The day(s) and hours of operation the Sidewalk Vendor intends to operate;
- j. The dimensions of any Sidewalk Vending Receptacle(s) intended to be used by the Sidewalk Vendor, including a picture of each such Sidewalk Vending Receptacle and any signs that will be affixed thereto;
- k. Whether the Sidewalk Vendor will be selling food, merchandise, or both;
- l. 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 food will require a heating element inside of or on the Sidewalk Vending Receptacle for food preparation, and the type of heating element, if any;
- m. A copy of a San Diego County health permit required for any Sidewalk Vendor selling food;
- n. If the Sidewalk Vendor is selling merchandise, a description of the merchandise to be sold;
- o. Proof that the Sidewalk Vendor 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;
- p. Public liability insurance and property damage insurance in the amount of \$1 million per occurrence and aggregate, including product liability coverage written by an insurance company acceptable to the City. All insurance companies affording coverage shall be required to add the City as an "additional insured" under the insurance policy. A copy of the policy endorsement shall be provided to the City. A certificate of insurance,

providing evidence of coverages in compliance with this section, shall be supplied to and approved by the City prior to issuance of the Permit.

A liability insurance policy for the naming the City as additionally insured for \$1,000,000 shall be maintained at all times, a copy of which shall be kept on file with the Permit at the City. Renewal must be provided to the City before expiration of the insurance on file;

- q. An acknowledgement that the Sidewalk Vendor will obtain and maintain throughout the duration of any Permit issued under this Policy any insurance required by the City's Risk Manager;
- r. An acknowledgment that the Sidewalk Vendor and its employees will comply with all other applicable local, state, and federal laws, rules and regulations relating to conducting the Sidewalk vending operations;
- s. An agreement by the Sidewalk Vendor to defend, indemnify, release and hold harmless the City of Encinitas, its City Council, boards, commissions, officers, agents, 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, attorneys' 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 issued by the City or the Sidewalk Vendor's Sidewalk vending operations. This indemnification shall include, but not be limited to, damages awarded against the City, any costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action or proceeding whether incurred by the Sidewalk Vendor, the City, and/or the parties initiating or bringing such proceeding;
- t. An acknowledgement that use of public property is at the Sidewalk Vendor's own risk, and that the City does not take any steps to ensure public property is safe or conducive to the Sidewalk vending operations;
- u. If the Sidewalk Vendor has operated in the City in the past, proof of prior sales tax allocation to the City; and
- v. Any other relevant information required by the Director relating to objective health, safety and welfare concerns in compliance with SB 946.

3. Each application for a Sidewalk Vendor Permit or renewal Permit shall be accompanied by a nonrefundable application fee as established by Resolution of the City Council. The application and Permit are only applicable to the individual(s) named on the application and are non-transferable.

C. Issuance of Permit.

1. Within thirty (30) calendar days after receiving a Permit application deemed to be complete by the City, the Director shall issue a Sidewalk Vendor Operations Permit, with appropriate conditions, as provided for herein, if the following can be determined:

- a. The conduct of the Sidewalk vending operations 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;
- b. The conduct of the Sidewalk vending operations will not unduly interfere with normal governmental or City operations, threaten to result in damage or detriment to public property;
- c. The conduct of the Sidewalk vending operations will not constitute a fire hazard, and the Sidewalk Vendor acknowledges and agrees that all proper safety precautions will be taken in conducting the Sidewalk vending operations;
- d. The conduct of the Sidewalk vending operations will not require the diversion of Sheriff's Department deputies to properly police the area of such operations so as to interfere with normal police protection for other areas of the City;
- e. The Sidewalk Vendor's application contains all of the information required by this Policy and the City;
- f. The Sidewalk Vendor has not made a materially false, misleading or fraudulent statement of fact in the application process;
- g. The Sidewalk Vendor has not had a Permit revoked within the same calendar year by the City;
- h. The Sidewalk Vendor has paid all previous administrative fines associated in any way with a previous violation of this Policy;
- i. The Sidewalk Vendor has satisfied all the requirements of this Policy;
- j. The Sidewalk Vendor has paid all applicable Permit fees as set by City Council Resolution;
- k. The Sidewalk Vendor's Sidewalk Vending Receptacle and proposed operations conform to the requirements of this Policy;
- l. The Sidewalk Vendor has the required insurance to protect the City from liability associated with the Sidewalk Vendor's activities, as determined by the City, and, the City has been named as an additional insured; and
- m. The Sidewalk Vendor has satisfactorily provided all information requested by the Director to consider the Sidewalk Vendor's application.

2. A Sidewalk Vendor Operations Permit is non-transferable. Any change in ownership or operation of a Sidewalk Vendor requires a new Permit under this Policy.

3. All Permits issued under this Policy must be renewed twelve (12) months from the initial date of issuance. If the term of liability insurance expires within the Permit term, the Permit approval is revoked unless evidence of insurance renewal is provided to the City.

D. Operating Conditions.

All Sidewalk Vendors are subject to the following operating conditions when conducting Sidewalk vending operations in the City:

1. All food and merchandise shall be stored either inside or affixed to the Sidewalk Vending 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 Vending Receptacle, the overall space taken up by the Sidewalk Vending Receptacle shall not exceed the size requirement provided in this Section.

2. All Sidewalk Vendors shall allow a peace officer, firefighter, code enforcement officer, health inspector, or other government official charged with enforcing laws related to the Sidewalk Vendor's operations, at any time, to inspect their Sidewalk Vending Receptacle for compliance with the size requirements of this Section and to ensure the safety of their operations.

3. To facilitate the enforcement of this Policy, every Sidewalk Vendor must display their City-issued Sidewalk Vending Operations Permit on the street-side portion of their Sidewalk Vending Receptacle. If multiple Sidewalk Vendors are staffing a Sidewalk Vending Receptacle or working as Roaming Sidewalk Vendors under the same Sidewalk Vending Permit, each Person shall wear a copy of their Permit on their Person in a conspicuous manner.

4. Sidewalk Vendors shall not leave their Sidewalk Vending Receptacle unattended to solicit business for their Sidewalk vending operations. Sidewalk Vending Receptacles shall not be stored on public property at times when the Sidewalk vending business is not operating and shall be removed when not in active use by a Sidewalk Vendor.

5. No equipment or objects used for Sidewalk vending purposes may be left or maintained in public spaces or in any portion of the public right-of-way from sunset or 8:00 p.m., whichever is earlier, to 8:00 a.m. Any equipment or objects left overnight in public spaces or in any portion of the public right-of-way will be considered discarded and may be seized and/or disposed of by the City.

6. A Sidewalk Vending Operations Permit does not provide an exclusive right to operate within any specific portion of the public right-of-way, as further defined in Section E of this Policy.

7. Sidewalk Vending Receptacles and any attachments thereto shall not exceed dimensions larger than four (4) feet in width, four (4) feet in length, and eight (8) feet in height.

8. To maintain accessibility standards for the City's disabled residents, every Sidewalk Vendor operating on any Sidewalk or public right-of-way must ensure that no obstruction, including the Sidewalk Vendor and their patrons, is placed or located in the Sidewalk

or public right-of-way that would reduce the width of the Sidewalk to less than five (5) feet, exclusive of the top of the curb.

9. Sidewalk Vendors shall maintain a minimum five (5) foot clear accessible path free from obstruction, including Sidewalk Vending Receptacles and customer queuing area.

10. To prevent unintended rolling or slipping, a Sidewalk Vendor is prohibited from operating a pushcart, pedal-driven cart, wagon, or other non-motorized conveyance on a public-right-of-way with a slope greater than five (5) percent.

11. To prevent dangerous distractions and promote the general welfare of the City's residents, Sidewalk Vendors shall not use any electrical, flashing, wind powered, or animated signage nor amplifiers and/or sound making devices.

12. All signage and advertising related in any way to the Sidewalk Vendor shall be attached to the Sidewalk Vending Receptacle or Person, and pricing for all items clearly displayed.

13. Freestanding items including but not limited to, signs, tables, chairs, shade structures, or other furniture at or near the Sidewalk vending area that is in addition to the Sidewalk Vending Receptacle that meets the size standards is prohibited.

14. No Sidewalk Vending Receptacle shall contain or use an open flame, propane, natural gas, portable generator, or other explosive or hazardous materials.

15. If a Sidewalk Vending Receptacle requires more than one (1) Person to conduct the Sidewalk vending operations, all Sidewalk Vendors associated with the Sidewalk Vending Receptacle shall be within five (5) feet of the Sidewalk Vending Receptacle when conducting Sidewalk vending operations.

16. Sidewalk Vendors that sell food shall have a San Diego County health permit in their possession at all times while they are conducting Sidewalk vending operations.

17. Sidewalk Vendors that sell food shall maintain a trash container and separate recycling container in or on their Sidewalk Vending Receptacle and shall not empty their trash or recycling into public receptacles. The size of the Sidewalk 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.

18. Sidewalk Vendors shall immediately clean up any food, grease, or other fluid or item related to Sidewalk vending operations that falls on public property; drainage of water or waste from the Sidewalk Vending Receptacle is strictly prohibited.

19. Sidewalk Vendors shall not interfere in any way with anyone engaged in a sporting activity and shall not approach spectators who are watching a sporting activity to sell food or merchandise.

20. Sidewalk Vendors shall not vend to or otherwise conduct transactions with persons in moving vehicles or vehicles illegally parked or stopped.

E. Prohibited Activities and Locations.

1. Sidewalk Vending Receptacles shall not touch, lean against or be affixed at any time to any building or structure including, but not limited to, lamp posts, parking meters, mailboxes, traffic signals, fire hydrants, benches, bus shelters, newsstands, trashcans or traffic barriers.

2. Sidewalk Vendors shall not engage in any of the following activities:

- a. Renting merchandise to customers;
- b. Displaying merchandise or food that is not available for immediate sale;
- c. Selling of alcohol, marijuana, adult-oriented material, tobacco products, products that contain nicotine or any product used to smoke/vape/ingest nicotine or marijuana;
- d. Selling live animals;
- e. Using an open flame on or within any Sidewalk Vending Receptacle;
- f. Using an electrical outlet or power source that is owned by the City or another person other than the Sidewalk Vendor;
- g. Conducting sidewalk vending operations:
 - i. In residential areas of the City, between the hours of sunset or 6:00 p.m., whichever is earlier, and 9:00 a.m. daily;
 - ii. In all other areas of the City between the hours of sunset or 8:00 p.m., whichever is earlier, and 8:00 a.m. daily;
- h. Continuing to offer food or merchandise for sale, following, or accompanying any person who has been offered food or merchandise after the person has asked the Sidewalk Vendor to leave or after the person has declined the offer to purchase food or merchandise;
- i. Knowingly making false statements or misrepresentations during the course of offering food or merchandise for sale;
- j. Blocking or impeding the path of the person(s) being offered food or merchandise to purchase;
- k. Making any statements, gestures, or other communications which a reasonable person in the situation of the person(s) being offered food or merchandise to purchase would perceive to be a threat and which has a reasonable likelihood to produce in the person(s) to feel the threat will be carried out;
- l. Touching the person being offered food or merchandise without that person's consent;

- m. Selling any food product which is not packaged at an approved facility;
- n. Dispensing single-use plastic bags or disposable food service ware constructed of expanded polystyrene or single-use plastic straws and single service plastic beverage containers;

3. Sidewalk Vendors shall not engage in Sidewalk vending operations at the following locations:

- a. Any Beaches.
- b. Any public property that does not meet the definition of a Sidewalk or Pathway.
- c. Sidewalk Vendors shall not engage in Sidewalk vending operations that would violate provisions of this Municipal Code relating to visibility requirements for streets, alleys, driveways, and intersections.
- d. On any designated Emergency Vehicle Access way.
- e. Within the immediate vicinity of an area designated for a Special Event permit issued by the City, during the limited duration of the temporary special permit. If the City provides any notice, business interruption mitigation, or other rights to affected businesses or property owners under the City's temporary special permit, such notice will also be provided to any Sidewalk Vendors specifically permitted to operate in the area, if applicable.
- f. Within twenty-four (24) inches of a parallel parking space.
- g. Within twelve (12) inches of any curb face on all roads.
- h. Within two hundred (200) feet of:
 - i. A fire station;
 - ii. A marine safety center;
 - iii. Any lifeguard stations;
 - iv. Sheriff's Department substation;
 - v. Hospitals
- i. Within one hundred (100) feet of:
 - i. A permitted certified farmer's market or swap meet during the limited operating hours of that certified farmer's market or swap meet;
 - ii. An area designated for a Special Event permit issued by the City, during the limited duration of the Special Event; or
 - iii. Locations designated as commercial filming areas via permit issued by the City.

- iv. Another Sidewalk Vendor in possession of a current and valid Permit issued by the City;
- v. A public or private school, a place of worship, or a large or general child daycare facility;
- vi. Any public picnic area, playground area or playground equipment;
- vii. Any public community center, pier, athletic field, softball/baseball diamond, basketball court, handball court, pickleball court, tennis court, soccer field, volleyball court, skate park or dog park;
- viii. Any public restroom;
- ix. The portion of any City facility that is renting merchandise or selling food to the public or where the rental merchandise is stored;
- x. A Sheriff's Department deputy, firefighter, lifeguard or emergency medical personnel who are actively performing their duties or providing services to the public; or
- xi. Outdoor dining tables, chairs, benches, or other furniture used for the purpose of providing outdoor dining to restaurant patrons.

j. Within twenty-five (25) feet of a(n):

- i. Fire hydrant;
- ii. Curb which has been designated as white, yellow, green, blue, or red zone, or a bus zone;
- iii. Automated teller machine;
- iv. Freeway entrance;
- v. Driveway, alley, or entrance to a parking lot or parking garage;
- vi. Entrance or exit to a building, structure or facility;
- vii. The intersection of a street and a Sidewalk; or
- viii. Any manholes, utility access and vents.
- ix. Trash receptacle, bike rack, bench, bus stop, restroom, or similar public use items;

4. Stationary Sidewalk Vendors shall not sell food or merchandise or engage in any Sidewalk vending operations:

- a. At any Park or Beach where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire; or
- b. On Sidewalks or Pathways directly adjacent to or within Residential areas.

F. Violations, Penalties.

Violations of this Policy shall not be prosecuted as infractions or misdemeanors and shall only be punished by the following administrative citation amounts and revocation structure:

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

- a. An administrative fine not exceeding one hundred dollars (\$100) for a first violation;

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

2. If a Sidewalk Vendor violates any portion of this Policy and cannot present the citing officer with a proof of a valid Permit, the Sidewalk Vendor shall be assessed administrative fines in the following amounts:

- 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 (1) year of the first violation;
- c. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one (1) year of the first violation.

3. Upon proof of a valid permit issued by the City, the administrative fines set forth in Section F(2) of this Policy shall be reduced to the administrative fines set forth in Section F(1), of this section.

G. Denial, Suspension and Revocation of Permit, Appeals.

1. The Director may deny, suspend or revoke a Permit issued to a Sidewalk Vendor upon any of the following grounds:

- a. The third violation or any subsequent violation(s) within one (1) year of the first violation; or
- b. Any other reason in accordance with EMC Chapter 6.02, General Provisions.

2. Decision to deny, suspend or revoke a Permit may be appealed in accordance with EMC Section 6.02.200, Appeal.

3. Decision to impose administrative fines may be appealed in accordance with EMC Section 1.08.080, Administrative Citations.