

ORDINANCE NO. 2024-XX

AN ORDINANCE ADDING CHAPTER 3.36 TO THE COUNTY OF ALAMEDA'S GENERAL ORDINANCE CODE RELATING TO REGULATION OF SIDEWALK VENDORS

WHEREAS, on September 17, 2018, California Governor Edmund Gerald Brown signed Senate Bill 946 ("SB 946") into law, which added Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the California Government Code to regulate sidewalk vending throughout the state, including within the County of Alameda; and

WHEREAS, on September 23, 2022, California Governor Gavin Christopher Newsom signed Senate Bill 972 ("SB 972") into law, which amended Sections 113818, 113831, and 113868 of, and to add Chapter 11.7 (commencing with Section 114368) to Part 7 of Division 104 of, the Health and Safety Code, further regulating specific types of sidewalk vending throughout the state, including within the County of Alameda; and

WHEREAS, existing provisions of the County of Alameda General Ordinance Code prohibit or limit the activities of sidewalk vending in a manner that may be in conflict with the provisions of SB 946 and SB 972; and

WHEREAS, the Board of Supervisors adopts this Ordinance in accordance with the authority granted by SB 946 and SB 972 and declares that the provisions of this Ordinance are intended to facilitate sidewalk vending activities in accordance with SB 946 and SB 972, while also promoting the public's health, safety, and welfare; and

WHEREAS, the Board of Supervisors further declares that the provisions of this Ordinance are intended to regulate the time, place, and manner of sidewalk vending directly relating to public health, safety, and welfare objectives and concerns; and

WHEREAS, the Board of Supervisors further declares that the provisions of this Ordinance, including, but not limited to those governing minimum sidewalk widths, sidewalk vending unit sizes, distance requirements, and food and merchandise storage, are intended and necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards;

NOW, THEREFORE, the Board of Supervisors of the County of Alameda hereby ordains that Chapter 3.36 of the County of Alameda General Ordinance Code is deleted in its entirety and replaced as follows:

Chapter 3.36 - Sidewalk Vendors.

3.36.010 -- Purpose.

- A. The purpose of this Chapter is to establish a permitting and administrative program for sidewalk vending that is consistent with Senate Bill 946 (Chapter 459, Statutes 2018) and Senate Bill 972 (Chapter 489, Statutes 2022). The provisions of this chapter allow the County to facilitate sidewalk vending activities through proper administration, while also protecting the public's health, safety, and welfare.
- B. The Board of Supervisors hereby finds that to promote entrepreneurship and support immigrant and low-income communities, while also promoting the public's health, safety, and welfare, laws on sidewalk vending are necessary to:
1. Ensure no unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress and egress from any residence, business, public facility or legally parked or stopped vehicles;
 2. Provide reasonable access for the safe and efficient use and maintenance of sidewalks, poles, posts, traffic signs or ramps, hydrants, mailboxes, police or fire call boxes, sidewalk elevators, delivery areas, loading zones, transit shelters, curb ramps, parking meters, and locations used for public transportation services;
 3. Ensure sidewalk vending activities comply with the Americans with Disabilities Act and do not restrict passage for persons with disabilities.
 4. Preserve sanitary conditions by ensuring that vendors properly maintain their area; and
 5. Prevent or minimize other public health, safety, or welfare hazards caused or exacerbated by unregulated vending.

3.36.020 – Definitions.

As used in this chapter, the following terms and phrases shall have the meaning ascribed to them in this part, unless the context in which they are used clearly requires otherwise. If a term or phrase is not defined in this part, or elsewhere in this code, the most common dictionary definition is presumed to be correct.

- A. "Department" means the Alameda County Department in charge of enforcing this Ordinance as provided in the rules and regulations adopted by the County Administrator or their designee pursuant to this Chapter.
- B. "Director" means the Director of the Department.
- C. "Enforcement Official" means any County employee or agent of the County with the

authority to enforce any provision of this chapter, including the Director or their designee, as well as the Alameda County Sheriff or their designee only in the case that a violation of this Chapter involves criminal activity.

- D. “Food” means any raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part for human consumption, and chewing gum, and any item identified in Health and Safety Code Sections 113781, et seq.
- E. “Merchandise” means any item that is not Food as defined in this Chapter.
- F. “Public Right-of-Way” means land, which by deed, conveyance, agreement, dedication, usage or process of law is used or reserved for use as a public roadway in the unincorporated area, and also includes, but is not limited to, the sidewalk.
- G. “Sidewalk” means the area of the public right-of-way that is designated or ordinarily used for pedestrian travel and does not include alleys.
- H. “Sidewalk Vending Unit” means a facility for the sale of Food and/or Merchandise that operates from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person.
- I. “Sidewalk Vendor Activities” or “Sidewalk Vending Activity” includes Vending and/or actions done in anticipation of being a Sidewalk Vendor such as, but not limited to, operation, installation, placement, or maintenance of any Sidewalk Vending Units.
- J. “Sidewalk Vendor” means a person who Vends from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon the public right-of-way. The term “sidewalk vendor” does not include a person or entity that vends from a Mobile Food Facility as defined by Chapter 6.68, concerning retail food facilities.
- K. “Sidewalk Vendor Permit” means a permit issued by the Department under the provisions of this Chapter and the rules, regulations, and policies issued under this Chapter.
- L. “Vend” means to sell, offer for sale, expose or display for sale, solicit offers to purchase, or barter Food or Merchandise. Vending includes offering free samples of Food or Merchandise that are also for sale or negotiating fees for Food or Merchandise.

3.36.030 – Regulations and fees.

- A. Regulations. In enacting this Ordinance, the Board of Supervisors delegates authority to the County Administrator or their designee to, after a noticed public hearing, adopt such rules and regulations as necessary to implement, administer, and enforce this chapter. The County Administrator or their designee may revise the adopted regulations from time to time after posting the proposed revisions on the department webpage for not less than ten (10) calendar days with a solicitation for public comments and considering any public

comments received.

- B. Fee Schedule. As soon as practicable, the County Administrator or their designee shall submit to the Board of Supervisors a proposed schedule of fees to be charged to the Sidewalk Vendor to cover the County's costs of administering and enforcing this Chapter.

3.36.040 – Permit required.

- A. Permit Required. No person may perform any Sidewalk Vending Activities in unincorporated County of Alameda, including a public right-of-way or any other street, sidewalk, alley, walkway, or pedestrian path available to the public, without first having obtained a Sidewalk Vendor Permit pursuant to this Chapter.
- B. Permit Display Required. A Sidewalk Vendor shall prominently display a valid Sidewalk Vendor Permit that corresponds with the vendor's Sidewalk Vending Activity while vending in accordance with this Chapter.
- C. Application. A written application for a Sidewalk Vendor Permit shall be filed with the Department on a form provided by the County. The contents of the application, and the Department processing the applications, are identified within the rules and regulations adopted pursuant to this Chapter and any policies issued by the Director.
- D. Application and Permit Fees. Each application for a Sidewalk Vendor Permit shall be accompanied by an application fee as established by the Department and/or resolution of the Board of Supervisors. The application and permit are only applicable to the individual(s) named on the application.
- E. Permit Fee Waiver. The County Administrator or their designee may adopt regulations authorizing the Director to fully and/or partially waive fees for new Sidewalk Vendor Permits and partially waive fees for Sidewalk Vending Permit renewals, for reasons including, but not limited to, economic hardship and a Vendor's status as an agent of a nonprofit corporation exempt from federal taxation under 26 U.S.C. Section 501(c)(3), as it may be amended.

3.36.050 – Issuance of permit.

- A. The Department may reject an application for a Sidewalk Vendor Permit for any of the reasons contained in the rules and regulations adopted pursuant to this Chapter and any pre-existing policy issued by the Director.
- B. A Sidewalk Vendor Permit is non-transferable. Any change in ownership or operation of a Sidewalk Vendor or Sidewalk Vending Unit requires a new permit under this Chapter.
- C. All Sidewalk Vendor Permits issued under this Chapter expire on December 31 of the year in which they were issued, unless such permit was issued within 45 days of the end of the calendar year, in which case such permit shall expire on December 31 of the following calendar year.
- D. The Department may rescind a Sidewalk Vendor Permit for any of the reasons contained in the rules and regulations adopted pursuant to this Chapter and any pre-existing policy issued by the Director, including the discovery of false or misleading information in the

permit application.

3.36.070 – Enforcement; Penalties.

- A. The Department is charged with the enforcement of the provisions of this Chapter. Any Enforcement Official may at all reasonable times inspect the facilities and operations of a Sidewalk Vendor in accordance with this Chapter, the rules and regulations issued hereunder, and pre-existing policies issued by the Director, and all other laws and regulations applicable to Sidewalk Vending.
- B. Violations of this Chapter shall not be prosecuted as infractions or misdemeanors and shall only be punished by the following administrative fine and rescission provisions:
1. A warning for a first violation;
 2. An administrative fine not exceeding one hundred dollars (\$100) for a second violation;
 3. An administrative fine not exceeding two hundred dollars (\$200) for a third violation within one (1) year of the first violation; and
 4. 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 may be punished by:
1. A warning for a first violation;
 2. An administrative fine not exceeding two hundred fifty dollars (\$250) for a second violation;
 3. An administrative fine not exceeding five hundred dollars (\$500) for a third violation within one (1) year of the first violation; and
 4. 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 subsequently issued by the County, the administrative fines set forth in subsection C shall be reduced to the administrative fines set forth in subsection B.
- E. Notwithstanding any other provision of this Code, when imposing an administrative penalty pursuant to this Chapter, the Director shall provide the person who is the subject of the administrative penalty with notice of the right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination.
- F. A person who is the subject of an administrative penalty under this Chapter may request that the County make an ability-to-pay determination on a form prescribed by the Director

pursuant to California Government Code Section 51039(f)(1). The person may request this determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

- G. The Director may allow the person subject to an administrative penalty to complete community service in lieu of paying the total administrative fine, may waive the fine, or may offer an alternative disposition.
- H. The Director, or their designee, may rescind a Sidewalk Vendor Permit for the term of that permit upon a fourth or subsequent violation of this Chapter.

3.36.080 – Appeals.

- A. Decisions to deny an application for a permit or to impose administrative fines may be appealed by the applicant or Sidewalk Vendor. Appeals shall be heard and determined by the applicable board of zoning adjustments.
- B. Appeals must be filed within twenty-one (21) calendar days of the decision or imposition of administrative fine. Notwithstanding any other provision of law, a person appealing an administrative fine is not required to pay the administrative fine as a prerequisite to filing an appeal.
- C. Appeals of decisions or administrative fines shall be made in writing to the applicable board of zoning adjustments on forms provided by the County. The appeal shall state the facts and basis for the appeal.
- D. Appeals of a decision to deny an application for a Sidewalk Vendor Permit shall be accompanied by a fee as established by resolution of the Board of Supervisors.
- E. Decisions regarding administrative fines that are appealed shall not become effective until the appeal is resolved.
- F. An appeal shall be scheduled for a hearing before the board of zoning adjustments within thirty (30) calendar days of the receipt of the appeal unless both the appellant and the Director consent to a later date.
- G. The appropriate board of zoning adjustments shall give notice in writing to the appellant of the time and location of the appeal hearing. At the hearing, the board of zoning adjustments shall review the record of the decision or administrative fine and hear testimony of the appellant, if any, the applicant and any other interested party. The appeal shall be reviewed and determined on a de novo basis.
 - 1. If an administrative fine is the subject of an appeal, the board of zoning adjustments shall take into consideration the person's ability to pay the fine. The board of zoning adjustments 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 or before the hearing or while the administrative fine remains unpaid.
 - 2. If the person meets the criteria described in subdivision (a) or (b) of

California Government Code Section 68632, or any successor section, the board of zoning adjustments shall accept, in full satisfaction, twenty percent (20%) of the administrative fine imposed pursuant to this Chapter.

3. The board of zoning adjustments 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. After the hearing, the board of zoning adjustments shall affirm, modify, or reverse the original decision or administrative fine. When a decision or administrative fine is modified or reversed, the board of zoning adjustments shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within thirty (30) calendar days of the close of the hearing. The board of zoning adjustments shall mail notice of a decision to the appellant. Such notice shall be mailed within five (5) working days after the date of the decision to the appellant. The decision of the board of zoning adjustments shall be final.

SECTION 2: Chapter 12.08 – Roadway Use Regulations, of the Alameda County General Ordinance Code is hereby amended by the deletion thereof of the following Section:

Section 12.08.640 is hereby deleted.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of this entire Ordinance or any of the remaining portions hereof. The Board of Supervisors hereby declares that it would have passed this Ordinance, and each section, subsection, subdivision, sentence, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional or otherwise invalid.

SECTION 4: The Board of Supervisors finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 5: The County Clerk of the County of Alameda shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law in the County of Alameda.

ADOPTED this xx day of xx, 20xx.

ATTEST:

County Clerk

I, xxx, County Clerk of the County of Alameda, do hereby certify that the foregoing **Ordinance No. xx** was introduced and adopted at a regular meeting of the Board of Supervisors on xx xxx, 20xx by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

President of the Board of Supervisors

APPROVED AS TO FORM:
Donna R. Ziegler, County Counsel

By: _____
K. Scott Dickey
Assistant County Counsel

ATTEST

County Clerk, County of Alameda, CA