

## ***ARTICLE 16 SIDEWALK VENDORS***

### **SEC. 6-16.10. TITLE.**

This Article shall be known as the "Sidewalk Vendor Ordinance".

(Created by Ordinance 23-08, § 5, adopted October 17, 2023)

### **SEC. 6-16.20. PURPOSE.**

Article XI, § 7 of the California Constitution confers local governments the authority to adopt ordinances and regulations designed to promote the public health, safety, and general welfare of their communities. The purpose of this Article is to protect against unsafe conditions and health, safety, or welfare concerns of the community that result from the operation of sidewalk vendors on public sidewalks or a pedestrian path, consistent with the provisions of Government Code §§ 51036—51039. The requirements set forth in this Article 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, and are properly permitted with the City and licensed with other agencies.

(Created by Ordinance 23-08, § 5, adopted October 17, 2023)

### **SEC. 6-16.30 DEFINITIONS.**

For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

"Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

"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.

"Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.

(Created by Ordinance 23-08, § 5, adopted October 17, 2023)

### **SEC. 6-16.40 PERMIT REQUIRED.**

- (a) Only sidewalk vendors with valid sidewalk vending permit issued by the City Manager, or his or her designee, may vend within the City's public right-of-way.
- (b) Applications shall include information required by the City including, but not limited to the following:
  - (1) The name, phone number, and mailing address of the applicant.
  - (2) Description of the merchandise and/or food offered for sale.
  - (3) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal and any owners of the company, partnership, or corporation.
  - (4) Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor.

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- (5) The location(s) in the City where the stationary sidewalk vendor intends to operate:
    - (a) If the sidewalk vendor proposes to be a stationary sidewalk vendor, a description or site plan/map of the proposed location(s) where vending will take place; and
    - (b) Certification that the information is true to his or her knowledge and belief.
  - (6) A copy of a valid California Department of Tax and Fee Administration seller's permit, if applicable.
  - (7) A copy of a valid Mobile Food Facility Permit issued by the Alameda County Department of Environmental Health (ACDEH), if required.
  - (8) An agreement by the sidewalk vendor, in a form approved by the City Attorney, to indemnify and hold harmless the City, its officers, and employees, for any damage or injury arising from the sidewalk vending activities.
  - (9) Proof of a policy or policies of comprehensive general liability insurance, in an amount as approved by the City Attorney, against any injury, death, loss, or damage as a result of wrongful or negligent acts or omissions by the permittee, with an endorsement naming the City as an additional insured.
  - (10) Payment of a nonrefundable processing fee, if required, in an amount established by resolution of the City Council.
- (c) All sidewalk vendors are required to have a business license pursuant to Chapter 8 (Finance, Revenue and Taxation), Article 1 (Business Licenses) of the Hayward Municipal Code.
  - (d) A sidewalk vending permit shall be valid for a period of one (1) year from the date of issuance and shall be renewed annually.

(Created by Ordinance 23-08, § 5, adopted October 17, 2023)

## **SEC. 6-16.50 OPERATIONAL REGULATIONS.**

- (a) It shall be unlawful for any person to operate as a sidewalk vendor or to engage in sidewalk vending activities in the City without first obtaining a sidewalk vending permit pursuant to Section 6-16.60 of this Article.
- (b) All sidewalk vendors must display their City-issued sidewalk vending permit and any other licenses issued by other agencies on the street-side portion of their pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance when operating in the public right-of-way.
- (c) Sidewalk vending activities in residential zoning districts may occur only between the hours of 9:00 a.m. and 7:00 p.m.
- (d) Sidewalk vending activities in nonresidential zones will be as restrictive as any limitations on hours of operation imposed on other businesses or uses on the same street, excluding those permitted to operate 24 hours.
- (e) If applicable, sidewalk vendors shall obtain and maintain a valid Mobile Food Facility (MFF) permit from the Alameda County Department of Environmental Health (ACDEH) during all sidewalk vending activities in the City. Sidewalk vendors shall display the MFF permit during vending operations and shall be made available to the City as part of the permit application or renewal process.
- (f) Each sidewalk vendor shall provide a trash receptacle for use by its customers and shall ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash so that public trash receptacles for use by the general public do not have to be used by customers.
- (g) Sidewalk vendors shall not dispose of customer or sidewalk vendor's trash in trash receptacles for public use.

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- (h) All sidewalk vendors shall immediately clean up any food, grease, or other fluid or item related to their sidewalk vending activities that are spilled or discharged on public property. Disposal of trash, food, grease or other materials to any storm drain, creek, or waterway is prohibited. Vendors shall not dump, drain, or discard any fouled, spoiled, or unused product, which includes draining ice coolers, drink containers and/or miscellaneous containers on the ground.
  - (i) All sidewalk vendors are responsible for ensuring that the surrounding sidewalk is kept clean and free of trash and debris associated with their vending operation.
  - (j) No sidewalk vendor shall vend in a manner that blocks or obstructs the access required by Americans with Disabilities Act of 1990, access to designated loading zones, and access to public utilities. Sidewalk vendors must at all times provide a clearance of not less than four (4) feet on all sidewalks or pedestrian areas so as to enable persons to freely pass while walking, running, or using mobility assistance devices.
  - (k) A sidewalk vendor operating on any sidewalk or public right-of-way must ensure that no obstruction is placed impeding entry to and exit from a business or residence or access to a public facility.
  - (l) Sidewalk vending of the following is prohibited:
    - 1. Alcoholic beverages;
    - 2. Adult-oriented materials, as defined in Section 6-10.02 of the Hayward Municipal Code;
    - 3. Tobacco, tobacco products, or electronic smoking devices;
    - 4. Cannabis or cannabis products;
    - 5. Weapons, including knives, guns, or explosive devices, as defined in Section 3-4.00 of the Hayward Municipal Code;
    - 6. Items that are not for immediate sale;
    - 7. Selling or offer to sell services, or engage in or offer to engage in any type of rental activity, including the rental of any goods or services;
    - 8. Pharmaceuticals; and
    - 9. Any other merchandise prohibited by federal, state, or local law from being vended.
  - (m) Sidewalk vendors shall comply with the noise standards provided in Chapter 4, Article 1 of the Hayward Municipal Code, as it is most currently in effect and as may be amended.
  - (n) Consistent with the Alameda County Department of Environmental Health limitations, no pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending shall contain or use propane, natural gas, batteries, or other explosive or hazardous materials. A sidewalk vendor may not use an open flame on or within any pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending.
  - (o) Any electrical, flashing, wind-powered, or animated freestanding signs are prohibited. Vending equipment may have signs attached to or painted on the vending equipment. The total sign area shall not exceed four square feet.
  - (p) Sidewalk vendors shall comply with all generally applicable federal, state, and local laws.

(Created by Ordinance 23-08, § 5, adopted October 17, 2023)

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## **SEC. 6-16.60 LOCATION-SPECIFIC REGULATIONS.**

- (a) To protect pedestrian safety and accommodate public street access, including parking and traffic, sidewalk vending shall be prohibited:
- (1) On any public property that does not meet the definition of a sidewalk, including, but not limited to, any street, roadway median, pedestrian islands, or bicycle lanes;
  - (2) City owned property including, but not limited to, parking structures and parking lots, unless otherwise authorized by the City;
  - (3) In any area that constricts passageway for pedestrians or vehicles to less than minimum required or obstructs traffic signals or regulatory signs;
  - (4) On any median strip or dividing section within public right-of-way areas;
  - (5) Within 18 inches from the edge of a curb;
  - (6) Within 15 feet from any fire hydrant, driveway or alleyway, or door/emergency exit;
  - (7) Within 20 feet of any mid-block crosswalk or storm drain;
  - (8) Within 25 feet of any bus stop, street corner, or street intersection;
  - (9) Within 100 feet of any emergency facility (fire station, police station, hospital) or public or private school on days when school is in session;
  - (10) Within 200 feet of any farmer's market or special event for the duration of the event;
  - (11) Within 200 feet of any freeway entrance or exit;
  - (12) Stationary sidewalk vendors shall not vend within 50 feet of another stationary sidewalk vendor;
  - (13) Stationary sidewalk vendors shall not vend within a park if the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire;
  - (14) Stationary vendors that have not signed an agreement for concessions shall not vend within 100 feet of a public park, unless otherwise permitted; and
  - (15) Sidewalk vendors are prohibited from entering or encroaching onto private property while engaged in sidewalk vending activities.

(Created by Ordinance 23-08, § 5, adopted October 17, 2023)

## **SEC. 6-16.70 PENALTIES AND ADMINISTRATIVE CITATIONS.**

- (a) Persons found vending in violation of this Article are subject to the following enforcement procedure:
- (1) For the first incident, a verbal warning will be given along with materials outlining the rules and regulations for sidewalk vending and the application process;
  - (2) For the second incident, a written warning will be issued specifying the provision of this Article that has been violated as well as materials outlining the rules and regulations for sidewalk vending and the application process;
  - (3) For the third incident, persons found in violation of this Article shall be subject to the Administrative Citation procedures found in Chapter 1, Article 7. Administrative Citations, of the Hayward Municipal Code, subject to the fines below:

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- (a) Persons that violate local regulations, other than operating without a permit, are punishable by an administrative fine not to exceed:
    - (1) One hundred dollars (\$100.00) for a first violation; or
    - (2) Two hundred dollars (\$200.00) for a second violation within one year of the first violation; or
    - (3) Five hundred dollars (\$500.00) for each additional violation within one year of the first violation.
  - (b) Persons vending without a sidewalk vending permit are punishable by an administrative fine not to exceed:
    - (1) Two hundred fifty dollars (\$250.00) for the first violation; or
    - (2) Five hundred dollars (\$500.00) for a second violation within one year of the first violation; or
    - (3) One thousand dollars (\$1,000.00) for each additional violation within one year of the first violation.
  - (c) All administrative citations will be accompanied by a notice advising the person of their right to request an ability-to-pay determination and the process for requesting an ability-to-pay determination.
- (b) Appeals. The appeals process contained in Chapter 1, Article 7 shall apply to citations issued under this Article as well as requests for an ability-to-pay determination. An administrative fine imposed pursuant to this Article need not be paid as a pre-requisite to requesting an appeal hearing or a hearing to determine ability-to-pay an administrative fine.

(Created by Ordinance 23-08, § 5, adopted October 17, 2023; Amended by Ordinance 24-06, § 1, adopted June 25, 2024)

## **SEC. 6-16.80 IMPOUNDMENT.**

- (a) The city may impound vending devices, food, goods, and/or merchandise that:
  - (1) Reasonably appear to be abandoned on public property; or
  - (2) Are displayed, offered, or made available for rent or sale by a sidewalk vendor who: (A) operates in violation of this chapter; and (B) refuses to remove their vending device, food for sale and/or goods/merchandise for sale after being instructed to do so by a city enforcement official; or
  - (3) Are displayed, offered, or made available for rent or sale by a sidewalk vendor who: (A) does not possess a valid applicable Sidewalk Vending Permit; and (B) also refuses to remove their vending device, food for sale, and/or goods/merchandise for sale after being instructed to do so by a city enforcement official; or
  - (4) Is: (A) creating an imminent and substantial safety or environmental hazard by the location of the vending device or the nature of the goods being offered for sale; and (B) refuses to remove their vending device, food for sale, and/or goods/merchandise for sale after being instructed to do so by a city enforcement official.
- (b) The city may immediately dispose of impounded materials that are perishable or cannot be safely stored.
- (c) An aggrieved vendor may, within ten days, appeal the impoundment of their property by requesting an administrative hearing before a hearing officer appointed by the city pursuant to Chapter 1, Article 7 and if

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successful in their appeal, may have their property returned without paying an impound fee. The appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedure contained in Chapter 1, Article 7 in the Hayward Municipal Code. Any appeal fee paid by the sidewalk vendor shall be returned to the sidewalk vendor if they are successful on appeal.

- (d) An individual may recover impounded materials upon paying applicable impound fees and demonstrating proper proof of ownership.
- (e) The city council may by resolution adopt impound fees, which shall reflect the city's enforcement, investigation, storage, and impound costs.
- (f) Any unclaimed items will be considered abandoned and forfeited to the city after ninety days following impoundment.

(Created by Ordinance 24-06, § 1, adopted June 25, 2024)

#### **SEC. 6-16.90 CITY MANAGER AUTHORITY.**

The City Manager, or their Designee, shall have the authority to establish administrative policies and regulations that may be necessary to implement the provisions of this Article.

(Created by Ordinance 23-08, § 5, adopted October 17, 2023; Amended by Ordinance 24-06, § 1, adopted June 25, 2024)