

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AMENDING TITLE 8 OF THE CARLSBAD MUNICIPAL CODE BY REPEALING AND REPLACING CHAPTER 8.32 TO CREATE A SIDEWALK AND FOOD TRUCK VENDING EQUIPMENT PERMIT PROGRAM.

WHEREAS, the California State Legislature has added Chapter 6.2 to Part 1 of Division 1 of Title 5 of the Government Code;

WHEREAS, section 8.32.010 of the Carlsbad Municipal Code substantially restricts sidewalk vendors' ability to do business in Carlsbad and conflicts with new state law;

WHEREAS, the Carlsbad City Council seeks to comply with new state law and recognizes that sidewalk and street vending provide important entrepreneurship and economic development opportunities to low-income and immigrant communities, contribute to a dynamic public space and increase access to desired goods and culturally significant food and merchandise;

WHEREAS, the City Council also seeks to protect the health, safety and welfare of the public and the use and enjoyment of public spaces, natural resources and recreational opportunities within the City of Carlsbad;

WHEREAS, the City Council finds that there is a need to regulate the sale of food and merchandise in the public right-of-way and ensure that trash and debris are removed;

WHEREAS, regulations are needed to ensure that street and sidewalk vendors prepare food safely and according to all applicable regulations;

WHEREAS, regulations are needed to accommodate vending equipment while safeguarding pedestrian and vehicular movement and access on and near sidewalks and other thoroughfares;

WHEREAS, the City Council finds that regulation of sidewalk and street vending benefits the City by promoting orderly commerce; and

WHEREAS, the City Council seeks to create a vending equipment permit program that will regulate street vendors in Carlsbad.

THEREFORE, the City Council of the City of Carlsbad, California, does ordain as follows:

Section 1. The above recitations are true and correct.

Section 2. That chapter 8.32 of the Carlsbad Municipal Code is hereby repealed and replaced as follows:

CHAPTER 8.32 VENDING AND SOLICITING

SECTIONS

- 8.32.010 Purpose and Findings**
- 8.32.020 Definitions**
- 8.32.030 Vending Equipment Permit Requirements**
- 8.32.040 Business License Requirement**
- 8.32.050 Release and Indemnification Requirements**
- 8.32.060 Insurance Requirement**
- 8.32.070 Permit Denial and Revocation**
- 8.32.080 Sidewalk Vending Generally**
- 8.32.090 Sidewalk Vending Equipment**
- 8.32.100 Food Truck Vending Requirements**
- 8.32.110 Penalties and Fines**
- 8.32.120 Impoundment of Vending Equipment**
- 8.32.130 Sidewalk Cafes**
- 8.32.140 Sidewalk Sales**
- 8.32.150 Street Fairs**
- 8.32.160 Standing**
- 8.32.170 Severability**
- 8.32.180 Non-Applicability**

8.32.010 Purpose and Findings

A. The purpose of this chapter is to establish a regulatory program to comply with California State Senate Bill 946 (Chapter 459, Statutes 2018). This chapter's provisions will encourage micro-business owners to engage in the business and economic community of the City of Carlsbad by removing prohibitions against vending on public sidewalks and right-of-ways, while still maintaining regulations that protect public health, safety and welfare. The time, place and manner restrictions throughout this chapter are necessary to:

1. Comply with the Americans with Disabilities Act (ADA) by providing clear and open sidewalks and access to public transportation areas;
2. Successfully provide police, fire and emergency services;
3. Ensure the safe flow of vehicular traffic and pedestrians along public roadways, sidewalks and right-of-ways, particularly along and near high traffic and narrow sidewalks and right-of-ways;
4. Protect natural resources and preserve the utility, natural beauty and recreational value of public spaces throughout the City;
5. Protect public health and safety by ensuring vendors utilize proper sanitation in food handling and preparation;
6. With regard to restrictions on vending in the Carlsbad Village Sea Wall trail area as defined herein, many portions of this trail area are narrow and regularly host a high volume of pedestrians and dogs (on the upper area) traveling in each direction. Restrictions on

sidewalk vending are necessary to protect the public from injury given the Sea Wall area's popularity as a destination for tourists and residents alike;

7. With regard to restrictions on vending in public parks and recreational facilities, these restrictions are necessary to: preserve the public's free use and enjoyment of natural resources and recreational opportunities; prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of these spaces; and ensure the health, safety and welfare of persons engaged in active sports activities and spectators of active sports activities.

- B. This chapter is found to be categorically exempt from environmental review pursuant to CEQA Guidelines section 15061(b)(3), in that the City Council finds and determines that there is nothing in this chapter or its implementation, either individually or cumulatively, which would foreseeably have any significant effect on the environment.
- C. Nothing in this chapter shall be construed to affect the existing requirements of Carlsbad Municipal Code section 11.32.030, concerning unlawful acts and the issuing of facility use and special event permits in City parks and beaches.
- D. Nothing in this chapter shall be construed to affect the requirements of San Diego County Code section 61.201 or Part 7 (beginning at Section 113700) of Division 104 of the California Health and Safety Code as applied to an individual who sells food or beverages.

8.32.020 Definitions

For purposes of this chapter the following definitions apply:

"Business license" means a license issued by the City of Carlsbad pursuant to Carlsbad Municipal Code chapters 5.04 and 5.08, authorizing an individual to conduct business within City limits.

"City" means the City of Carlsbad.

"Conveyance" means any wheeled device used to carry persons or property.

"Food truck" means a motorized vehicle specifically equipped for the sale of food or beverages used for vending purposes.

"Food truck vendor" means a person who vends food or beverages using a food truck.

"Ice cream truck" means a food truck engaged in the curbside vending or sale of frozen or refrigerated desserts, confections or novelties commonly known as ice cream, or prepackaged candies, snack foods or soft drinks, primarily intended for sale to children under 12 years of age.

"Pedestrian path" means a paved path or walkway owned by the City or other public entity that is specifically designed for pedestrian travel, other than a sidewalk.

"Permittee" means the authorized recipient of a duly issued vending equipment permit.

"Residential street" means any street that adjoins one or more single family or multi-family residentially zoned parcel(s).

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

“Sidewalk Vendor” means a person who vends food or merchandise using nonmotorized vending equipment or from one’s person, upon or along a public sidewalk or other public pedestrian path.

“Vend” or “vending” means an offer to sell or the sale of goods, merchandise, food or beverages on a public street, alley, highway, parking lot, sidewalk, pedestrian path or right-of-way.

“Vending equipment” means any motorized or non-motorized conveyance used for sidewalk or food truck vending purposes including but not limited to: food trucks, pushcarts, pedal-driven carts, wagons, bicycles or any other free-standing conveyance.

“Vending equipment permit” means a written City of Carlsbad approval required prior to the use of vending equipment for vending purposes.

8.32.030 Vending Equipment Permit Requirement

A. All sidewalk and food truck vendors wishing to utilize a motorized vehicle or non-motorized conveyance for vending, including but not limited to food trucks, carts, wagons, bicycles or any other miscellaneous conveyance, must obtain a vending equipment permit for each conveyance prior to use on any public street, sidewalk or right-of-way. Permits shall be issued by the Finance Director or designee, unless otherwise specified in the Carlsbad Municipal Code, including but not limited to section 11.32.030.

B. A vending equipment permit shall be valid for one calendar year from the date of issuance and must be renewed annually. Permits may only be issued for one conveyance and shall not be sold, assigned or transferred.

C. To obtain a vending equipment permit, an applicant must submit the following information on a permit application form provided by the City’s Finance Department:

1. The name, address and telephone number of the applicant and business owner;
2. Proof of valid, government-issued identification (i.e., driver’s license, state identification card, taxpayer identification number, social security card, birth certificate or passport);
3. Description of the type of motorized or non-motorized vehicle or conveyance to be permitted, including license number, make, model, size, signage and design type;
4. The nature of every good, merchandise, food or beverage the applicant intends to sell using the vehicle or non-motorized conveyance;
5. The proposed character, location, days, hours and route of vending operations;
6. Proof of insurance, as required by section 8.32.060 of this chapter;
7. Proof of a valid California Department of Tax and Fee Administration seller’s permit that notes the City of Carlsbad as a location or sub-location, which shall be maintained for the duration of the vendor’s permit;

8. Proof of a valid San Diego County Health Certificate and San Diego County Food Handlers Card; and

9. Such other information as the City Manager or designee deems reasonably necessary to administer this chapter.

D. Each vending equipment permit application shall be accompanied by a non-refundable permit fee as established by resolution of the City Council.

8.32.040 Business License Requirement

A. All individuals engaged in vending on any City street, alley, highway, parking lot or right-of-way subject to the provisions of this chapter are subject to the business license requirements contained in chapters 5.04 and 5.08 of this code.

B. A City business license shall be prominently be displayed at all times on the vendor's person or vending equipment during all vending activities.

8.32.050 Release and Indemnification Requirements

A. If the City issues a permittee a vending equipment permit, as a condition of such permit issuance, permittee agrees to waive and release the City and its officers, agents, employees and volunteers from and against any and all claims, costs, liabilities, expenses or judgments including attorney's fees and court costs arising out of any vending activities or any illness or injury resulting therefrom, and hereby agrees to indemnify and hold harmless the City from and against any and all such claims, whether caused by negligence or otherwise, except for illness and injury resulting directly from gross negligence or willful misconduct on the part of the City or its employees.

B. If the City issues a permittee a vending equipment permit, as a condition of such permit issuance, permittee further must acknowledge that the use of public property is at the sidewalk vendor or food truck vendor's own risk, the City does not take any steps to ensure public property is safe or conducive to the vending activities, and the vendor uses public property at their own risk.

8.32.060 Insurance Requirements

All sidewalk vendors and food truck vendors shall obtain and maintain throughout the duration of any permit issued under this chapter any insurance required by the City's Risk Manager. All vendors must provide evidence of any required insurance, including but not limited to commercial general liability insurance, auto insurance and worker's compensation insurance, in a form and with a coverage amount acceptable to the City's Risk Manager based on the size and risk factors of the business. With regard to any commercial general liability insurance policy, the vendor shall name the City as an additional insured, and with a coverage amount to be determined by the Risk Manager according to the size and risk factors of the business. When determining the size of the business and the risk to customers and the general public, the Risk Manager's estimates shall be determinative. The insurance policy required by this section shall not be cancelled, limited or not renewed without 30 days' prior written notice to the City.

8.32.070 Permit Denial and Revocation

- A. Any false or misleading statements or information provided in a vending equipment permit application shall be grounds for denial of the application and/or imposition of penalties as outlined in accordance with this chapter.
- B. A vending equipment permit application may be denied if the applicant has had a prior vending equipment permit revoked within the past 36 calendar months for the same vending equipment.
- C. A vending equipment permit may be revoked for any of the following reasons:
 - 1. False information or facts supplied by the applicant upon which the issuance of the vending equipment permit was based;
 - 2. Failure of the applicant to promptly notify the City Manager or designee of any material changes to the facts provided in a vending equipment permit application subsequent to the issuance of a vending equipment permit, including but not limited to lapse of liability insurance;
 - 3. Failure of the applicant to comply with the regulations set forth in this chapter.
- D. Revocation of a vending equipment permit shall be served in writing no less than 30 days before revocation to the address listed on the initial application or to any subsequent address provided to the City by the permittee.
- E. Any applicant whose application for a vending equipment permit is denied or whose permit is revoked may appeal such decision to the City Manager or designee by filing a written notice of appeal within 10 calendar days after receipt of the notice of denial or revocation. The City Manager or designee shall review and render a decision on the appeal within 90 calendar days. The decision made by the City Manager or designee shall be final.

8.32.080 Sidewalk Vending Generally

- A. Vending activities may occur between the hours of 8:00am and sunset in all residential zoned areas and between the hours of 8:00am and 10:00pm in industrial and commercial zoned areas and between the hours of.
- B. No sidewalk vending of any type shall take place to any individuals traveling within motor vehicles along a public roadway.
- C. A sidewalk vendor shall not vend on any exclusively residential street for longer than 60 minutes at any given time.
- D. No sidewalk vending of any kind shall take place in the following locations:
 - 1. In the public right-of-way or any area that blocks pedestrian or vehicle access;
 - 2. Any public property that does not meet the definition of a sidewalk, including but not limited to any alley, beach, pier, square, street, street end or parking lot;
 - 3. Within 50 feet of another sidewalk vendor;
 - 4. Within 18 inches from the edge of a curb;
 - 5. Any location that obstructs traffic signals or regulatory signs;

6. Within 15 feet of any intersection, driveway or building entrance, or within any space designed for vehicular parking;
 7. Within 15 feet of any fire hydrant or fire escape;
 8. Within 100 feet of any vehicle entrance of any fire station, police department, hospital or any other structure involved in health and safety emergency matters;
 9. Within 15 feet of any loading zone, bus stop, parking space or access ramp designed for persons with disabilities;
 10. Within 10 feet of an outdoor dining or patio area;
 11. Within 500 feet of a permitted special event or street fair;
 12. Within one-half mile of a public school building or school grounds while children are going to or from the school, during a recess period or within 30 minutes before or after the school's opening or closing hours;
 13. Within 500 feet of high-traffic landmarks and venues, as determined by the City Manager or designee and published in an Administrative Order, which shall include justification that such restrictions are directly related to objective health, safety or welfare concerns;
 14. On any portion of the Carlsbad Village Sea Wall trail, which extends alongside Carlsbad Boulevard and adjacent to the beach, between the cross streets of Pine Avenue and Tamarack Avenue. This restriction on vending shall include both the upper and lower portions of the Sea Wall trail.
- E. Vending activities in public parks and recreational facilities must also comply with the following:
1. Vending within public parks or recreational facilities is allowed only upon or alongside sidewalks or other paved or marked pedestrian pathways. Outside of these aforementioned areas, vending shall not take place on sand, dirt, grass or on any space which would obstruct, damage or otherwise adversely affect the public's use and enjoyment of natural resources and recreational opportunities, or contribute to an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.
 2. Vending activities that adversely affect the health, safety and welfare of persons engaged in active sports activities and spectators of active sports activities are prohibited.
 3. Sidewalk vending activities lasting 10 minutes or longer in duration shall not be permitted within any area of a public park if the park operator has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a specified concessionaire.
 4. A valid park and facility use permit or special event permit obtained pursuant to Carlsbad Municipal Code section 11.32.030 may waive these requirements for limited engagements or events.

8.32.090 Sidewalk Vending Equipment

- A. Notwithstanding any specific requirements of this section, no sidewalk vendor shall use vending equipment in such a way as to endanger the safety of person or property or to cause a public or private nuisance, including but not limited to the use of an open flame.
- B. All non-motorized vending equipment including push carts, wagons, pedal carts or bikes shall not exceed six feet in length and four feet in width.
- C. Vendors are responsible for ensuring that the 10-foot area immediately surrounding the vending space is kept clean and free of trash and debris associated with their vending operation.
- D. Vendors are forbidden from using sound-making devices in conjunction with vending, including but not limited to loudspeakers, public address systems, bells, chimes or other noisemaking devices.
- E. Vendors are forbidden from erecting freestanding structures adjacent to vending activities, including but not limited to signs, umbrellas, ice chests, chairs, tables or benches.
- F. No vending equipment shall be attached to or make contact with any utility pole, street sign, bus stop, trash can, traffic pole or any other public structure.
- G. No vending equipment or merchandise shall be left unaccompanied, stored, parked or left overnight on a public street, alley, highway, parking lot, sidewalk or right-of-way at any time.

8.32.100 Food Truck Vending Requirements

- A. Subject to the provisions in this chapter, a food truck vendor may sell or offer to sell merchandise, food or beverages from a food truck only at the request of a bona fide purchaser and may not park or stand for longer than 60 minutes on any public street, alley, highway, parking lot, sidewalk or right-of-way.
- B. Each food truck operator is subject to the business license requirements contained in chapters 5.04 and 5.08 of this code.
- C. Each food truck used for vending must obtain a vending equipment permit pursuant to section 8.32.030 of this chapter.
- D. A food truck vendor may not vend in the following locations:
 - 1. At any location that obstructs traffic signals or regulatory signs;
 - 2. Within 100 feet of another food truck vendor;
 - 3. Within any street, alley, highway or public right-of-way with a posted speed limit greater than 25 miles per hour;
 - 4. Within 100 feet of an intersection that contains a street, alley, highway or public right-of-way with a posted speed limit greater than 25 miles per hour;
 - 5. At any location that does not have an unobstructed view for 200 feet in both directions along the street, alley, highway or public right-of-way.
 - 6. Within 25 feet of any intersection, public driveway or building entrance.
 - 7. Within 25 feet of any fire hydrant or fire escape;
 - 8. Within 100 feet of any vehicle entrance of any fire station, police department, hospital or any other structure involved in health and safety emergency matters;
 - 9. Within 25 feet of an outdoor commercial dining or patio area;

10. Within 500 feet of a permitted special event or street fair;
11. Within one-half mile of a public school building or school grounds while children are going to or from the school, during a recess period or within 30 minutes before or after the school's opening or closing hours;
12. Within 500 feet of high-traffic landmarks and venues, as determined by the City Manager or designee and published in an Administrative Order;
13. Along any portion of the Carlsbad Village Sea Wall trail, which extends alongside Carlsbad Boulevard and adjacent to the beach, between the cross streets of Pine Avenue and Tamarack Avenue.

E. Notwithstanding any specific requirements of this section, no vendor shall operate a food truck in such a way as to endanger the safety of person or property or to cause a public or private nuisance.

F. All ice cream trucks must be equipped at all times with signs mounted on both the front and the rear and clearly legible from a distance of 100 feet under daylight conditions, incorporating the words "WARNING" and "CHILDREN CROSSING." Each sign shall be at least 12 inches high by 48 inches wide, with letters of a dark color and at least four inches in height, a one-inch solid border and a sharply contrasting background.

G. All food truck vendors are forbidden from using sound-making devices in conjunction with vending, including but not limited to loudspeakers, public address systems, bells, chimes or other noisemaking devices.

H. Except for Department of Transportation approved vehicle lights, no artificial lighting for, or installed on, food trucks is permitted.

I. No freestanding structures may be attached to or erected adjacent to a food truck including, but not limited to signs, umbrellas, ice chests, chairs, tables or benches.

J. Food truck vendors are responsible for ensuring that the 10-foot area immediately surrounding any vending space is kept clean and free of trash and debris associated with the vending operation.

8.32.110 Penalties and Fines

A. Any violation of any of the provisions of this chapter by any individual holding a valid vending equipment permit will constitute an infraction and shall be punished as follows:

1. An administrative citation and \$100 penalty for a first violation.
2. An administrative citation and \$200 penalty for a second violation.
3. An administrative citation and \$500 penalty for a third and each subsequent violation.

B. Any person found vending without a valid vending equipment permit is punishable by the following in lieu of the administrative fines set forth in subdivision (A):

1. An administrative fine of \$250 for a first violation.
2. An administrative fine of \$500 for a second violation within one year of the first violation.
3. An administrative fine of \$1,000 for a third violation within one year of the first violation.
4. An administrative fine of \$1,000 for each subsequent violation within one year of the first violation and impoundment of vending equipment pursuant to Section 8.32.120 of this chapter.

5. Proof of a valid vending equipment permit issued by the City will result in a reduction of administrative fines to the administrative fine schedule set forth in subdivision (A).

C. With regard to sidewalk vendors only: Failure to pay an administrative fine pursuant to subdivisions (A) and (B) shall not be punishable as an infraction or misdemeanor; additional fines, fees, assessments or any other financial conditions beyond those authorized in subdivisions (A) and (B) shall not be assessed.

D. The issuance of four or more administrative citations or verifiable municipal code violations concerning vending equipment permit requirements within a 12-month period shall result in revocation of all vending equipment permits pursuant to this chapter.

E. Vending equipment permit revocation is subject to a 30-day prior written notice. A permittee may appeal such decision to the City Manager or designee by filing a written notice of appeal within 10 calendar days after receipt of the notice of denial or revocation. The City Manager or designee shall review and render a decision on the appeal within 90 calendar days. The decision made by the City Manager or designee shall be final.

F. In the event a vending equipment permit is revoked, an application to reestablish any vending equipment permit pursuant to this chapter shall not be accepted for a minimum period of 36 months from the date the prior permit was revoked.

8.32.120 Impoundment of Vending Equipment

A. In addition to the administrative fines taken pursuant to Section 8.32.120 above, any enforcement officer, as defined in the Carlsbad Municipal Code section 1.10.010, may, upon an individual's fourth or greater violation of this chapter, impound vehicles, vending equipment and any perishable or non-perishable goods therein.

B. Any owner of impounded vehicles and/or vending equipment may, within 10 days, request an administrative hearing before a hearing officer appointed by the City.

C. By 5:00pm on the next business day following impoundment, a violator will be contacted regarding the details given in the impoundment citation. The equipment and/or vehicles will then be released to the owner provided that proper proof of ownership is presented and the City receives payment in full of all towing and administrative costs incurred as a result of the violation. Any unclaimed items will be considered abandoned and forfeited to the City after 90 days following impoundment.

8.32.130 Sidewalk Cafes

Subject to the provisions of Title 21 of the Carlsbad Municipal Code, a business located in a commercial zone may erect permanent dining and lounge areas on public sidewalks subject to the discretion of the City. If permitted by the provisions of Title 21, a permanent structure, all or part of which is located on a public street, sidewalk, parking lot or easement, may be used for the sale of goods or merchandise, provided that all appropriate permits required by Titles 6, 11, 18 and 21 have been issued.

8.32.140 Sidewalk Sales

The City Manager or designee may, from time to time, issue temporary permits providing for the holding of promotional sidewalk sales, subject to such restrictions as to length of time and other conditions as the City Manager or designee deems reasonably necessary for the public health, safety and welfare.

8.32.150 Street Fairs

The City Manager or designee may from time to time issue temporary permits for street fairs subject to such restrictions as to the length of time and other conditions as the City Manager or designee deems reasonably necessary for the public health, safety and welfare.

8.32.160 Standing

Except as otherwise provided, enforcement of this chapter is at the sole discretion of the persons authorized to enforce this chapter. Nothing in this chapter shall create a right of action in any person against the City or its agents for damages or to compel public enforcement of this chapter against private parties.

8.32.170 Severability

If any subsection, subdivision, clause, sentence, phrase or portion of this chapter is held unconstitutional, invalid or unenforceable by any court or tribunal, the remaining subsections, subdivisions, clauses, sentences, phrases or portions of this ordinance shall remain in full force and effect.

8.32.180 Non-Applicability

The following persons, entities or activities are exempt from the requirements of this chapter:

- A. Any vendor or person engaged solely in artistic performances, free speech and/or petitioning activities;
- B. Nonprofit educational institutions, fraternal and service clubs, bona fide religious organizations and agencies of any federal, state or local governments;
- C. Nonprofit private clubs where a basic membership fee covers the cost of the use of the facilities;
- D. Community organizations/events not otherwise regulated by the Carlsbad Municipal Code, upon approval of the City Manager or designee;
- E. Businesses and trades that are exempt from licensing and tax regulations under federal and state statutes;
- F. Any organization, society, association or corporation desiring to solicit or have solicited in its name money, donations of money or property or financial assistance of any kind or desiring to sell or distribute any item of literature or merchandise to persons other than members of such organization upon the streets, in office or business buildings, by house-to-house canvass or in public places for charitable, religious, patriotic or philanthropic purpose exclusively.

EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption; and the City Clerk shall certify the adoption of this ordinance and cause the full text of the ordinance or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a Regular Meeting of the Carlsbad City Council on the _____ day of _____, 2019, and thereafter

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the __ day of _____, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED AS TO FORM AND LEGALITY:

CELIA A. BREWER, City Attorney

MATT HALL, Mayor

BARBARA ENGLESON, City Clerk

(SEAL)