

ORDINANCE NO. 2021-XXXX

AN ORDINANCE OF THE CITY OF SAN MARCOS,  
ADDING CHAPTER 5.75 (SIDEWALK VENDING) TO THE  
SAN MARCOS MUNICIPAL CODE REGULATING  
SIDEWALK VENDORS

WHEREAS, on September 17, 2018, the Governor of California approved California State Senate Bill No. 946, which was codified at California Government Code sections 51036 through 51039, and regulates sidewalk vending activities throughout the State of California ("SB 946"); and

WHEREAS, SB 946 restricts the ability of the City of San Marcos ("City") to regulate sidewalk vending activities, except pursuant to a sidewalk vending program adopted in pursuant to SB 946; and

WHEREAS, , the City has been regulating sidewalk vending activities in compliance with SB 946 pursuant to administrative resolutions and accompanying right-of-way permits, and has found that the City and its residents would benefit from more comprehensive regulation; and

WHEREAS, the City Council acknowledges that sidewalk vending provides important entrepreneurship and economic development opportunities, increases access to desired goods, and contributes to a safe and dynamic public space; and

WHEREAS, the City Council has previously acknowledged the adverse effects on public health and safety caused by increased traffic resulting from significant residential and commercial growth and, as a result, has found it necessary to limit work along certain portions of San Marcos Boulevard, allowing lane closures to take place only between the hours of seven p.m. to six a.m., or on weekends (Resolution No. 2002-5865); and

WHEREAS, recent sidewalk vending activities near schools, most of which are located on arterial streets, including San Marcos Boulevard, and Mission Avenue, have adversely impacted the traffic in those areas, adding to already congested traffic in the areas and posing a risk to pedestrian traffic which is increased around schools; and

WHEREAS, the City proposes adoption of this ordinance to add Chapter 5.75 to the San Marcos Municipal Code ("Chapter 5.75"), to regulate sidewalk vendors, in compliance with SB 946; and

WHEREAS, the City Council has determined that the regulations contained in Chapter 5.75 are necessary to: (i) protect the public health, safety, or welfare; (ii) ensure the public's use and enjoyment of natural resources and recreational opportunities; and (iii) prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of parks; and

WHEREAS, the City Council further finds that the provisions of Chapter 5.75 are directly related to public health, safety, and welfare concerns, including ensuring the following:

1. The safe flow of pedestrian and vehicular traffic, particularly near schools and other areas which experience heavy traffic and congestion;
2. Proper sanitization in food handling and preparation;
3. Successful provision of emergency services by limiting potential interference with such services;
4. Reduced potential for personal injury and property damage; and
5. Compliance with the American with Disabilities Act;

**NOW, THEREFORE**, the City Council of the City of San Marcos, in accordance with the freedom accorded to charter cities generally, and by the Charter of the City of San Marcos, specifically does ordain as follows:

**Section 1.** The above recitations and findings are true and correct.

**Section 2.** Chapter 5.75, "Sidewalk Vending," is hereby added to the San Marcos Municipal Code as follows:

### **Chapter 5.75 – Sidewalk Vending**

- 5.75.010 Purpose and Findings**
- 5.75.020 Definitions**
- 5.75.030 Required License and Permits**
- 5.75.040 Operating Conditions**
- 5.75.050 Hours and Locations of Operation**
- 5.75.060 Prohibited Activities**
- 5.75.070 Enforcement**
- 5.75.080 Prohibited Activities**
- 5.75.010 Purpose and Findings**

The purpose of this chapter is to regulate sidewalk vendors, pursuant to California Government Code section 51036, *et seq.* The provisions of this chapter will allow the City to permit small business activities on public sidewalks and pedestrian pathways, while

maintaining regulations to protect public health, safety, and welfare. The time, place, and manner restrictions throughout this chapter are necessary to:

- (1) Ensure vendors maintain sanitary conditions in Food preparation and handling;
- (2) Comply with the Americans with Disabilities Act by providing clear and open sidewalks and access to public transportation areas;
- (3) Provide necessary fire and emergency services;
- (4) Facilitate the safe flow of vehicular traffic and pedestrians along public roadways, sidewalks, and rights-of-way;
- (5) Protect natural resources and preserve the utility, natural beauty, and recreational value of public spaces throughout the City.

#### **5.75.020 Definitions**

For purposes of this chapter, when capitalized, the following terms shall have the definitions ascribed to them below:

- (a) **Applicant** means a Person who applies to the City for a business license or permit to operate as a Sidewalk Vendor in the City, pursuant to this Chapter.
- (b) **Alcoholic Beverage** shall have the same meaning as in the California Business and Professions Code Section 23004, or any successor section.
- (c) **Cannabis** shall have the same meaning attributed to it in SMMC section 5.54.020, or any successor section.
- (d) **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.
- (e) **Curb Face** means the vertical or sloping surface on the roadway side of the curb.
- (f) **Emergency Vehicle Access** means the roadway path or other surface that provides police or fire safety vehicular access from the dispatched point of origin to a facility, building, parcel, Park, 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.
- (g) **Food** means any item provided in Health and Safety Code Section 113781, or any successor section.
- (h) **Merchandise** means any item(s) that can be sold and immediately obtained from a Sidewalk Vendor which is not considered Food.

(i) **Park** means any area dedicated or established as a public park, including, without limitation, active and passive parks.

(j) **Pathway** means a paved path or other walkway developed or used primarily for pedestrian travel, other than a Sidewalk.

(k) **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, including agents acting on behalf of such Persons.

(l) **Public Property** means all property owned or controlled by the City, including, but not limited to, alleys, Parks, Pathways, easements, Streets, parking lots, Sidewalks, and walking trails.

(m) **Residential** means any area zoned exclusively as residential in SMMC Section 20.215.020, including without limitation the City's R-1-20, R-1-10, R-1-7.5, R-2, R-3-6, and R-3-10 zoning districts, and any specific plan area (SPA) that is exclusively designated for residential uses.

(n) **Roaming Sidewalk Vendor** shall have the same meaning attributed to it in Government Code section 51036.

(o) **Sidewalk** means that portion of a Street, other than the roadway, set apart by curbs, barriers, markings, or other delineation for pedestrian travel.

(p) **Sidewalk Vending Receptacle (SVR)** means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or nonmotorized conveyance used for Sidewalk Vending Activities.

(q) **Sidewalk Vendor** shall have the same meaning attributed to it in Government Code section 51036.

(r) **Sidewalk Vendor Activity(ies)** means actions that qualify a Person as a Sidewalk Vendor or actions done in anticipation of becoming a Sidewalk Vendor such as, but not limited to, installation, placement, maintenance, or use of any Sidewalk Vendor Receptacles.

(s) **Stationary Sidewalk Vendor** shall have the same meaning attributed to it in Government Code section 51036.

(t) **Street** means a way or place of whatever nature, public maintained, within City public right-of-way, and open to the use of the public for purposes of vehicular travel.

(u) **Swap Meet** means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(v) **Temporary Special Permit** means any permit issued by the City for the temporary use of, or encroachment on, the Sidewalk or other public area (e.g., encroachment permit, special event permits, temporary use permits, and film permits).

(w) **Tobacco Product** shall have the same meaning as attributed to it in SMMC Section 5.55.020, or any successor section.

#### **5.75.030 Required License and Permits**

(a) License and Permits Required

(1) It shall be unlawful for any Person to operate as a Sidewalk Vendor unless that Person is vending in compliance with all requirements of this chapter.

(2) Persons issued permits and licenses pursuant to this chapter shall vend only the Food and Merchandise, and only from locations, authorized by such permits and licenses.

(3) Persons operating at outdoor farmers' markets pursuant to, and in compliance with, City of San Marcos Municipal Code ("SMMC") chapter 20.455 shall not be subject to the requirements of this chapter.

(b) Business License

(1) No Person shall conduct business as a Sidewalk Vendor within the City without first obtaining a business license, in accordance with SMMC chapter 5.04. The issuing officer for licenses issued pursuant to this chapter shall be the Finance Director.

(2) No Applicant shall be granted a business license to conduct Sidewalk Vendor Activities without first having obtained:

(A) if the Applicant intends to sell Food:

(i) all necessary health permits from the County of San Diego;

(ii) a Health Permit in accordance with SMMC Title 8.

(B) a valid California Department of Tax and Fee Administration seller's permit and provided the number of such permit to the City; and

(C) any additional licenses that may be required by other state or local agencies.

(3) Any appeal of a licensing decision under this chapter shall be handled in accordance with SMMC chapter 5.04.

(4) A current City business license shall be displayed at all times on the Sidewalk Vendor's person or vending equipment during all Sidewalk Vendor Activities.

(c) Permits

(1) Sidewalk Vending Permit ("SVP")

(A) No Person shall conduct business as a Sidewalk Vendor within the City without first obtaining a Sidewalk Vending Permit ("SVP") from the City's Engineering

Division of the Development Services Department, and paying all required deposits and fees. An SVP is required for both Stationary and Roaming Sidewalk Vendors; a Stationary Vendor must also obtain a Stationary Vending Location Permit, per section 5.75.030(c)(2).

(B) Each Person seeking to operate as a Sidewalk Vendor within the City shall complete the requisite SVP application and submit it to the City Engineer, or designee. The application shall be in a form approved by the City Manager, or designee. The application shall be kept on file with the City Clerk and may be updated from time-to-time in the City Manager's reasonable discretion.

(C) The SVP application may seek the following from the Applicant:

- (i) Applicant's name and current mailing address;
- (ii) description of the Merchandise and Food, if any, to be offered for sale;
- (iii) information as to whether the Applicant is an agent of an individual, company, partnership, corporation or other entity, the name and business address of the principal;
- (iv) proof of insurance in accordance with the City's requirements;
- (v) a defense, indemnity, and hold harmless agreement, in the City's favor;
- (vi) all associated fees, as set by resolution of the City Council;
- (vii) certification under penalty of perjury that the information provided by the Applicant is true and correct; and
- (viii) any other information that the City Manager, in his or her reasonable discretion, deems necessary to administer this chapter and that is directly related to public health, safety or welfare concerns.

(2) Stationary Vending Location Permit ("SVLP")

(A) In addition to the business license and SVP described above, any Person seeking to conduct business as a Stationary Sidewalk Vendor must also obtain a Stationary Vending Location Permit ("SVLP").

(B) Each Person seeking to operate in the City as a Stationary Sidewalk Vendor shall complete the requisite application for an SVLP, in a form approved by the City Manager, or designee, and submit it to the City Engineer, or designee. The application shall be kept on file with the City Clerk and may be updated from time-to-time in the City Manager's reasonable discretion.

(C) The SVLP application may seek the following:

- (i) the specific location where the Applicant intends to operate as a Stationary Sidewalk Vendor, including a scaled diagram;
- (ii) all associated fees, as set by resolution of the City Council;
- (iii) certification under penalty of perjury that the information provided by the Applicant is true and correct; and
- (iv) any other information that the City Manager, in his or her reasonable discretion, deems necessary to administer this chapter and that is directly related to public health, safety or welfare concerns.

(3) Permit Issuance, Duration, Suspension, Revocation, and Appeals

(A) The issuing officer for the permits described in this section shall be the City Engineer.

(B) Upon a finding that an Applicant and the submitted application is in compliance with this section, and when all requisite fees have been paid, the City Engineer will issue the requested permit, and may condition as necessary to meet the requirements of this chapter. If a permit is issued, it will be in effect for six months from the date of issuance, unless otherwise revoked.

(C) If a permit is denied, the Applicant shall be notified in writing of the specific basis for the denial, and of the Applicant's right to appeal pursuant to subsection (E), below.

(D) A permit issued pursuant to the chapter may be suspended or revoked by the City Engineer upon finding a violation of law, or that the permittee's operations pose a threat of, or actual harm to, public health, safety, or welfare. If a permit is suspended or revoked pursuant to this section, the permittee may appeal the decision pursuant to subsection (E), below.

(E) The City Manager shall have the power to hear and decide appeals based upon enforcement or interpretation of the provisions of this chapter. Any Applicant or permittee who is aggrieved by any decision of the City Engineer may appeal that decision by submitting a written notice of appeal to the City Clerk within 21 days of the date on which notice of the decision was issued. The City Manager, or designee, shall preside over the hearing on appeal and shall, within 30 days from the date of the hearing, render their decision on the appeal, together with findings. The decision of the City Manager shall be final.

(c) Identification Requirements. In issuing licenses and permits pursuant to this chapter, the City will accept a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number when a social security number would otherwise be required. The number collected shall not be made available for public inspection and shall not be disclosed except

as necessary to ensure compliance with the SMMC, or as otherwise required by state law or court order.

(d) Current required licenses and permits shall be displayed at all times on the Sidewalk Vendor's person or Street-side portion of the SVR during all Sidewalk Vendor Activities.

#### **5.75.040 Operating Conditions**

All Sidewalk Vendors shall comply with all of the following when conducting Sidewalk Vending Activities:

(a) All Food and Merchandise shall be stored inside or affixed to the SVR, or carried by the Sidewalk Vendor, and shall not be stored, placed, or kept on any Public Property;

(b) Each SVR shall be accompanied during all hours of operation by at least one individual whose name and contact information has been previously provided to the City;

(c) No SVR or other vending equipment shall be left unaccompanied, stored, parked, or left overnight on any Public Property or public ROW;

(d) No SVR or other vending equipment shall touch, lean against, or be affixed to any building, structure, tree, pole, street sign, trash can, or other public structure;

(e) All signage and advertising related to the Sidewalk Vendor shall be affixed to the SVR;

(f) Electrical, flashing, wind-powered, or animated signs are prohibited;

(g) SVRs shall not be stored on Public Property and must be removed when not in active use;

(h) All SVRs are subject to, and Sidewalk Vendors shall allow, inspection by any City official charged with enforcing the laws related to Sidewalk Vending Activities;

(i) The use of propane, natural gas, batteries and other explosive or hazardous materials, the burning of wood or charcoal, and the utilization of open flames is prohibited;

(j) Sidewalk Vendors shall ensure that a minimum ten-foot area beyond the perimeter of the SVR is kept free of trash, Food, grease, fluids, and other debris related to the Sidewalk Vending Activities and the Sidewalk Vendor shall maintain, as part of the SVR, a trash receptacle capable of accommodating all refuse they generate;

(k) Sidewalk Vendors must comply with the Americans with Disabilities Act at all times;

(l) Sidewalk Vendors are prohibited from making transactions with persons located inside motor vehicles;

(m) Sound-making devices, including, but not limited to, loudspeakers, public address systems, bells, and chimes, are prohibited, and all Sidewalk Vending Activities must comply with SMMC chapter 10.24;



(n) Sidewalk Vendors are prohibited from and shall not erect or maintain structures, other than those permitted in the SVP, in conjunction with Sidewalk Vending Activities, including, but not limited to, signs, umbrellas, tables, chairs, shade structures, or other furniture;

(o) Notwithstanding any specific requirements of this chapter, Sidewalk Vendors shall not engage in activities that endanger any person or property, or create a public or private nuisance; and

(p) In addition to complying with this chapter, the Sidewalk Vendor shall comply with all other generally applicable federal, state, and local laws.

#### **5.75.050 Hours and Locations of Operation**

(a) Residential Areas. Subject to the limitations set forth in subsections (c) and (d), below:

(1) Stationary Sidewalk Vendors shall not operate in Residential areas.

(2) Roaming Sidewalk Vendors may operate in Residential areas between the hours of eight a.m. and sundown, daily.

(b) Non-Residential Areas. Subject to the restrictions set forth in subsections (c) and (d) below, Sidewalk Vendors may operate in non-Residential areas in the City as follows:

(1) If City ordinance or City Council resolution restricts the hours of operation or uses on a Street, Sidewalk Vendors shall be subject to the same restrictions when operating on such Street; and

(2) For all other areas, between the hours of seven a.m. and ten p.m. daily.

(c) City Parks.

(1) Stationary Sidewalk Vendors may not operate in a City Park if the Park operator has signed an agreement which limits the sale of concessions within the Park to a specific concessionaire.

(2) Sidewalk Vending Activities shall be subject to additional regulations adopted by the City consistent with Government Code Section 51038(b)(2)(B).

(d) Other Locations.

Sidewalk Vendors shall not operate at the following locations:

(1) Any location not expressly identified in the Sidewalk Vendor's current permit;

- (2) Any Public Property that does not meet the definition of a Sidewalk or Pathway including, but not limited to, any alley, plaza, Street, Street end, or parking lot;
- (3) In any designated Emergency Vehicle Access;
- (4) Within 12 inches of any Curb Face;
- (5) Within 15 feet of any entrance or exit to a building, structure, or facility;
- (6) Within five-hundred feet of a public or private school, or a day-care facility;
- (7) Within two-hundred feet of:
  - (A) a fire station;
  - (B) any Certified Farmers' Market or Swap Meet, during the operating hours of such event;
  - (C) an area designated for a Temporary Special Permit issued by the City, for the duration of the Temporary Special Permit;
- (1) Within one-hundred feet of:
  - (A) Another Sidewalk Vendor;
  - (B) The intersection of a Street and a Sidewalk;
  - (C) Any public picnic area, playground area, or playground equipment;
  - (D) The portion of any City facility that is renting or selling Merchandise or Food to the public, or where the Merchandise is stored; or
  - (E) Emergency services personnel actively performing their duties or providing services to the public.
- (2) Within twenty-five feet of a:
  - (A) Fire hydrant;
  - (B) Curb which has been designated as white, yellow, green, blue, or red zone, or a bus zone;
  - (C) Automated teller machine;
  - (D) Driveway, alley, or entrance to a parking lot or parking garage;

(E) Entrance or exit to a building, structure, facility, or freeway; or

(F) Trash receptacle, bike rack, bench, bus stop, restroom, or similar public use items.

#### **5.75.060 Prohibited Activities**

Sidewalk Vendors shall not:

- (a) Rent Merchandise to customers;
- (b) Display Merchandise or Food that is not available for immediate sale;
- (c) Sell Alcoholic Beverages, Cannabis, adult oriented material, Tobacco products, products that contain nicotine, or any product used to smoke/vape nicotine or marijuana;
- (d) Use an open flame on or within any SVR;
- (e) Use an electrical outlet or power source that is owned by the City without express consent from the City, and as that consent may be conditioned;
- (f) Continue to offer Food or Merchandise for sale, or to follow, or accompany any person who has declined the Sidewalk Vendor's offer of Food or Merchandise;
- (g) Knowingly make false statements or misrepresentations during the course of offering Food or Merchandise for sale;
- (h) Block or impede any Pathway or otherwise interfere with safe and free passage of any pedestrian, vehicle, or any person using any other mode of transportation;
- (i) Obstruct the vehicular line of sight at driveways or intersections, or otherwise impede the safe flow of traffic;
- (j) Advertise any product or service that is not related to the Food or Merchandise being offered for immediate sale; or
- (k) Place SVRs outside any Sidewalk or Pathway.

#### **5.75.070 Enforcement**

(a) Any Person or other responsible party who violates any provision of this chapter may be immediately issued an administrative citation pursuant to Government Code section 51039(a)(1) and in accordance with the administrative remedies set forth in SMCC chapter

1.14. An ability to pay notice shall accompany each administrative citation issued under this section, pursuant to Government Code section 51039(f)(1).

(b) Any Person or other responsible party who engages in any Sidewalk Vending Activities without a current Sidewalk Vending permit or a business license for Sidewalk Vendor Activities may be immediately issued an administrative citation pursuant to Government Code section 51039(a)(3) and in accordance with the administrative remedies set forth in SMMC chapter 1.14.

(c) A Sidewalk Vending permit or business license issued to a Sidewalk Vendor is subject to rescission upon the fourth or subsequent violations of this chapter, in accordance with Government Code section 51039(a)(2) and the provisions found in SMMC chapter 5.04.

(d) The Code Compliance division may, but is not obligated to, consider community service, waive the administrative citation, or offer any reasonable alternative disposition in lieu of payment of the total administrative citation(s) pursuant to Government Code section 51039(f)(3).

(e) In accordance with Government Code section 51039, and notwithstanding any other SMMC provision, violations of this chapter, or of permits or business licenses issued for Sidewalk Vending Activities, or failure to pay fines and fees assessed under this chapter shall not be punishable as an infraction or misdemeanor, and no other fines or fees shall be assessed.

(f) SVRs, or other related vending equipment, left unaccompanied for more than thirty minutes or left on Public Property in violation of this chapter are subject to impoundment by any assigned City employee. A fee will be assessed for each impoundment as set by resolution of the City Council.

**Section 3.** If any section, sentence, clause, or phrase of this Ordinance is determined to be invalid, illegal, or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause, or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

**Section 4.** This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance of the title thereof, as a summary as required by state law.

**Section 5.** The City Clerk shall certify to the passage of this Ordinance and cause the same to be published in accordance with the provisions of State Law in a newspaper of general circulation designated for legal notices publication in the City of San Marcos.

**INTRODUCED** at a regular meeting of the City Council of the City of San Marcos held on the 28th day of September 2021; and

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of San Marcos held on the \_\_\_\_ day of October 2021, by the following roll call vote:

AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:

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Rebecca D. Jones, Mayor  
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

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Phillip Scollick, City Clerk  
City of San Marcos

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Helen Holmes Peak, City Attorney  
City of San Marcos