

ORDINANCE NO. 19-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING SECTIONS 9-125 (BUSINESSES, PROFESSIONS, TRADES AND OCCUPATIONS REQUIRING A PERMIT UNDER THE PROVISIONS OF THIS CHAPTER) AND 9-128 (BUSINESSES WHERE THE DIRECTOR OF FINANCE MAY ISSUE PERMITS IN CASE OF NO OBJECTION) OF ARTICLE 1 (GENERALLY) AND THE PROVISIONS OF ARTICLE 9 (PUSHCART AND OTHER SIDEWALK VENDORS) OF CHAPTER II (REGULATION OF CERTAIN BUSINESSES) OF TITLE 9 (LICENSES AND BUSINESS REGULATION) OF THE COSTA MESA MUNICIPAL CODE, RELATING TO SIDEWALK VENDING

WHEREAS, the City of Costa Mesa, pursuant to its police power, may enact regulations for the public peace, morals, and welfare of the City; and

WHEREAS, the City of Costa Mesa desires to amend the provisions of the Costa Mesa Municipal Code to impose regulations related to health, safety and welfare; and

WHEREAS, the City of Costa Mesa desires to establish a permitting and regulatory program for sidewalk vendors that complies with Senate Bill 946 (Chapter 459, Statutes 2018) that both encourages certain small business activities and that protects the public health, safety and welfare; and

WHEREAS, the City Council of the City of Costa Mesa hereby finds that to promote and protect the public health, safety and welfare, restrictions on sidewalk vending set forth in this Ordinance are necessary to:

1. Ensure no unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress into or from, residences, businesses, or public buildings, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles;
2. Allow for the effective performance of police, firefighter and emergency medical personnel services in the public right-of-way;
3. Ensure that sidewalk vending activities occur only in locations where such activities would not restrict the use and enjoyment of sidewalks and pathways by persons with disabilities;
4. Provide reasonable access to the use and maintenance of sidewalks, pathways, poles, posts, traffic signs or signals, hydrants, firefighting apparatus, mailboxes, as well as access to locations used for public transportation services;
5. Maximize public access to all of the City's natural resources; and

6. Reduce exposure to the City for personal injury or property damage claims and litigation that may be caused in whole or in part by the activities of sidewalk vending in the public right-of-way.

WHEREAS, the City Council of the City of Costa Mesa hereby finds that the unique characteristics of the City require certain restrictions on sidewalk vending at certain locations as follows:

1. The Civic Center contains the City's emergency operation center, the headquarters for the Police Department, Fire Department and other critical infrastructure, and restrictions on sidewalk vending are necessary to ensure that police and fire equipment and personnel are easily accessible and critical infrastructure is maintained and accessible at all times;
2. Restrictions on sidewalk vending at and around other capital facilities are also necessary to ensure that these facilities are easily accessible to City personnel, vehicles and equipment;
3. Fairview Park provides unique passive recreational opportunities and experiences, which unique characteristics as natural open space have been determined by the electorate of the City as now set forth in Chapter V of Title 12 of the Costa Mesa Municipal Code, and lacks hardscape or other paved areas suited for sidewalk vending, such that restrictions on sidewalk vending therein are necessary to protect the natural resources and recreational opportunities, as well as scenic and natural character of this park;
4. Many of the City's other parks are heavily used for active sporting and recreational activities, such that restrictions on sidewalk vending at active parks are also necessary to protect the health, safety and welfare of persons engaged in active sports and/or recreational activities as well as spectators of sporting activities;
5. Many of the sidewalks and pathways in the City are under eight (8) feet wide and stationery sidewalk vending in these areas would unreasonably interfere with the flow of pedestrians and disrupt access for persons with disabilities;
6. Sidewalks immediately adjacent to the Orange County Fairgrounds become heavily impacted when the Orange County Fair and other events are operating, such that restrictions thereon are necessary to protect the health, safety and welfare of persons attending the Fairgrounds and utilizing those sidewalks; and
7. From time to time the City, public utilities, other authorized entities and/or persons engaging in permitted work thereon close or restrict access to and on portions of public sidewalks, pathways and other areas, such that restrictions against sidewalk vending in those areas so posted are necessary to protect the health, safety and welfare of persons in the immediate area.

WHEREAS, the City of Costa Mesa, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) has determined that the ordinance is not a "project" and further, that it is exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) (because it can be seen with certainty that the adoption of this Ordinance will not have an effect on the environment) such that no environmental review under CEQA is required; and

WHEREAS, all legal prerequisites prior to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE COSTA MESA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Sections 9-125 (Businesses, professions, trades and occupations requiring a permit under the provisions of this chapter) and 9-128 (Businesses where the director of finance may issue permits in case of no objection) of Article 1 (Generally) of Chapter II (Regulation of Certain Businesses) of Title 9 (Licenses and Business Regulation) of the Costa Mesa Municipal Code are hereby amended as follows:

9-125. Businesses, professions, trades and occupations requiring a permit under the provisions of this chapter.

- (p) *Sidewalk sales and parking lot sales.* The terms *sidewalk sales and parking lot sales* shall mean the sale of merchandise from a retail establishment located in a permanent structure directly adjacent to the sidewalk or parking lot used for the sale.
- (r) Sidewalk vending.

9-128. Business where the director of finance may issue permits in case of no objection.

- (i) *Sidewalk sales and parking lot sales.* The term *sidewalk sales and parking lot sales* shall mean the sale of merchandise from a retail establishment located in a permanent structure directly adjacent to the sidewalk or parking lot used for the sale.
- (j) Sidewalk vending.

Section 2. Article 9 (Pushcart and Other Sidewalk Vendors) of Chapter II (Regulation of Certain Businesses) of Title 9 (Licenses and Business Regulation) of the Costa Mesa Municipal Code is hereby amended in its entirety to read as follows:

9-191. Purpose

The purpose of this article is to establish a permitting and regulatory program for sidewalk vendors that complies with Senate Bill 946 (Chapter 459, Statutes 2018), that encourages certain small business activities and protects the public health, safety and welfare.

9-191.1 Definitions.

Unless defined in this article, this title or elsewhere in this Code, the words used in this

article shall have the same definitions ascribed to them in Chapter 6.2 of Part 1 of Division 1 of Title 5 of the Government Code. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute.

- (a) "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;
- (b) "Capital facility" means a facility set forth in section 2-208;
- (c) "Fire station" means any facility where fire engines and other equipment of the city's fire department are housed;
- (d) "Food" means any item provided in Health & Safety Code section 113781;
- (e) "Health Department" and/or "OCHCA" means the County of Orange Health Care Agency or any successor agency thereto as defined in Chapter II of Title 8 of this Code;
- (f) "Health permit" means a permit issued by the Health Department;
- (g) "Hearing officer" means the person appointed to conduct administrative reviews of civil citations pursuant to section 1-35;
- (h) "Heating element" means any device used to create heat for food preparation and/or sale;
- (i) "Merchandise" means any item(s) that can be sold and immediately obtained from a sidewalk vendor, which is not considered food; items for rent shall not be considered merchandise;
- (j) "Park" shall have the same meaning as defined Title 12 of this Code;
- (k) "Pathway" means a paved path or paved walkway owned by the city or other public entity that is specifically designed for pedestrian travel, other than a sidewalk;
- (l) "Permit" means a sidewalk vendor permit issued pursuant to this article;
- (m) "Person" shall have the same meaning as defined in Title 1 of this Code;
- (n) "Police station" means any facility where police vehicles and other equipment of the city's police department are housed;
- (o) "Public property" means all property owned or controlled by the city, including, but not limited to, buildings, alleys, boardwalks, parks, pathways, bike paths, streets, public rights-of-way, parking lots, sidewalks, and walking trails;
- (p) "Residential" means any area zoned or developed for residential use pursuant to Title 13 of this Code;
- (q) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction;
- (r) "Sidewalk" means that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation specifically designed for pedestrian and/or pedestrian and bicycle travel that is paved and owned by the city or other public entity;
- (s) "Sidewalk vending receptacle" or "sidewalk vendor receptacle" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending activities;
- (t) "Sidewalk vendor" or "vendor" means a person(s) who sells food or merchandise from a sidewalk vending receptacle or from one's person, upon a public sidewalk or pathway, and includes both stationary and roaming sidewalk vendors;
- (u) "Sidewalk vendor activities" or "sidewalk vending activity" 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, placement or maintenance of any sidewalk vendor receptacles;

- (v) "Special event" shall have the same meaning as defined in section 9-205;
- (w) "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location; and
- (x) "Swap meet" means a location operated in accordance with Article 6 (commencing with section 21660) of Chapter 9 of Division 8 of the Business & Professions Code, and any regulations adopted pursuant to that chapter.

9-191.2 Permit Required.

- (a) No person, either for themselves or any other person, shall engage in any sidewalk vendor activities within the city without first applying for and receiving a permit from the director of finance, or the director of finance's designee, under this article.
- (b) A written application for a sidewalk vendor permit shall be filed with the director of finance, on a form provided by the city, and shall contain the following information:
 1. The name, age, address, and telephone number of the person applying to become a sidewalk vendor;
 2. The name, address, and telephone number of the person who will be in charge of any roaming sidewalk vendors, sidewalk vending activity and/or be responsible for the person(s) working at the sidewalk vending receptacle;
 3. The name, address, and telephone number of all persons that will be employed as roaming sidewalk vendors or at a sidewalk vending receptacle;
 4. The number of sidewalk vending receptacles the sidewalk vendor will operate within the city under the permit;
 5. The location(s) in the city where the sidewalk vendor intends to operate;
 6. The day(s) and hours of operation the sidewalk vendor intends to operate at such location(s);
 7. Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor and, if roaming, the intended path of travel;
 8. The dimensions of the sidewalk vendor's sidewalk vending receptacle(s), including a picture of each sidewalk vending receptacle operating under the permit and any signs that will be affixed thereto;
 9. Whether the sidewalk vendor will be selling food, merchandise, or both;
 10. If the sidewalk vendor is selling food, a description of the type of food to be sold, whether such foods are prepared on site, whether such foods will require a heating element inside or on the sidewalk vending receptacle for food preparation, and the type of heating element, if any;
 11. If the vendor is selling merchandise, a description of the merchandise to be sold;
 12. A copy of the health permit required for any sidewalk vendors selling food, as required by Chapter II of Title 8 of this Code;
 13. Proof the person possesses a valid California Department of Tax and Fee Administration seller's permit which notes the city as a location or sublocation, which shall be maintained for the duration of the sidewalk vendor's permit;
 14. An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, state, and federal laws;

15. A certification that, to their knowledge and belief, the information contained within the application is true;
 16. An agreement by the sidewalk vendor to defend, indemnify, release and hold harmless the city, its city council, boards, commissions, officers and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation attorneys' fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the permit or the vendor's sidewalk vending activities. This indemnification shall include, but not be limited to, damages awarded against the city, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee, city, and/or the parties initiating or bringing such proceeding;
 17. An acknowledgement that use of public property is at the sidewalk vendor's own risk, the city does not take any steps to ensure public property is safe or conducive to the sidewalk vending activities, and the sidewalk vendor uses public property at their own risk;
 18. An acknowledgement that the sidewalk vendor will obtain and maintain throughout the duration of any permit issued under this article any insurance and endorsement therefore required by this article;
 19. Any other relevant information required by the director of finance, or the director of finance's designee.
- (c) Each application for a sidewalk vendor permit shall be accompanied by a nonrefundable application fee as established by resolution of the city council. The application and any permit issued therefor are only applicable to the individual(s) named on the application.
 - (d) Business license required. No person, either for themselves or any other person, shall engage in any sidewalk vendor activities within the city without first obtaining and thereafter maintaining a business license pursuant to Article 5 of this title.

9-191.3 Issuance of Permit.

- (a) Within thirty (30) calendar days of receiving a complete application, the director of finance acting as the issuing officer may issue a sidewalk vendor permit, with appropriate conditions, as provided for herein, if he or she finds based on all of the relevant information that:
 1. The conduct of the sidewalk vendor will not unduly interfere with traffic or pedestrian movement, or tend to interfere with or endanger the public peace or rights of nearby residents to the quiet and peaceable enjoyment of their property, or otherwise be detrimental to the public peace, health, safety or general welfare;
 2. The conduct of the sidewalk vendor will not unduly interfere with normal governmental or city operations, threaten to result in damage or detriment to public property, or result in the city incurring costs or expenditures in either money or personnel not reimbursed in advance by the vendor;
 3. The conduct of such sidewalk vending activity will not constitute a fire hazard, and all proper safety precautions will be taken;

4. The conduct of such sidewalk vending activity will not require the diversion of police officers to properly police the area of such activity as to interfere with normal police protection for other areas of the city;
 5. The sidewalk vendor has paid all previous administrative fines connected in any way with a previous violation of this article;
 6. The sidewalk vendor has not had a permit revoked within the past twelve (12) months;
 7. The sidewalk vendor's application contains all required information;
 8. The sidewalk vendor has not made a materially false, misleading or fraudulent statement of fact to the city in the application process;
 9. The sidewalk vendor has satisfied all the requirements of this Chapter;
 10. The sidewalk vendor has paid all applicable fees as set by City Council resolution;
 11. The sidewalk vendor's sidewalk vending receptacle and proposed activities conform to the requirements of this chapter;
 12. The sidewalk vendor provides a policy of liability insurance in a form and with companies approved by the city and approved to do business in California, which policy names the City of Costa Mesa, its officers, employees and agents as additional insureds in a minimum amount of one million dollars (\$1,000,000) combined single limit; and
 13. The sidewalk vendor has satisfactorily provided all information requested by the director of finance, to consider the vendor's application.
- (b) A sidewalk vendor permit is nontransferable. Any change in ownership or operation of a sidewalk vendor or sidewalk vending receptacle requires a new permit under this article.
- (c) All permits issued under this article shall expire twelve (12) months from date of issuance.

9-191.4 Operating Conditions.

All sidewalk vendors are subject to the following operating conditions when conducting sidewalk vending activities:

- (a) All food and merchandise shall be stored either inside or affixed to the sidewalk vendor receptacle or carried by the sidewalk vendor. Food and merchandise shall not be stored, placed, or kept on any public property. If affixed to the sidewalk vendor receptacle, the overall space taken up by the sidewalk vendor receptacle shall not exceed the size requirements provided in this section;
- (b) The sidewalk vendor permit shall be displayed conspicuously at all times on the sidewalk vending receptacle or the sidewalk vendor's person. If multiple sidewalk vendors are staffing a sidewalk vendor receptacle or working as roaming sidewalk vendors, each person shall wear their permit on their person in a conspicuous manner;
- (c) Sidewalk vendors shall not leave their sidewalk vending receptacle unattended to solicit business for their sidewalk vending activities;
- (d) All signage and advertising related in any way to the sidewalk vendor shall be attached to the sidewalk vending receptacle, if any, or the sidewalk vendor's person, and may not be attached or affixed to any adjacent public or private property;

- (e) Sidewalk vendors shall not use any electrical, flashing, wind powered, or animated sign;
- (f) Sidewalk vending receptacles shall not be stored on any public property and shall be removed when not in active use by a sidewalk vendor;
- (g) No sidewalk vending receptacle shall be loaded, unloaded, stocked or re-stocked with merchandise and/or food while on any public property, unless specifically authorized to do so by the terms of the permit, or on any publicly accessible private property without the prior written permission signed by the owner of that property;
- (h) All sidewalk vendors shall allow a police officer, firefighter, code enforcement officer, park ranger, health inspector, or other government official charged with enforcing laws related to the sidewalk vendor's activities, at any time, to inspect their sidewalk vending receptacle for compliance with the size requirements of this article and to ensure the safe operation of any heating elements used to prepare food;
- (i) Sidewalk vending receptacles and any attachments thereto shall not exceed a total height of four (4) feet measured from the ground, a total width of four (4) feet, and a total length of four (4) feet, except that if equipped with an awning, umbrella or similar attachment designed to provide shade and/or shelter, such attachment shall be a minimum of seven (7) feet high;
- (j) No sidewalk vending receptacle shall contain or use propane, natural gas, batteries, or other explosive or hazardous materials unless specifically authorized to do so by the terms an applicable health permit;
- (k) No sidewalk vendor may utilize any generator unless specifically authorized to do so by the terms of an applicable health permit;
- (l) If a sidewalk vending receptacle requires more than one person to conduct the sidewalk vending activity, all sidewalk vendors associated with the sidewalk vending receptacle shall be within five feet of the sidewalk vending receptacle when conducting sidewalk vending activities;
- (m) Sidewalk vendors that sell food shall have in their possession at all times they are conducting sidewalk vending activities a valid permit issued by the Health Department as required by Chapter II of Title 8 of this Code;
- (n) Sidewalk vendors that sell food shall maintain a trash container in or on their sidewalk vending receptacle and shall not empty their trash into public trashcans. The size of the vendor's trash container shall be taken into account when assessing the total size limit of a sidewalk vending receptacle. Sidewalk vendors shall not place any trash receptacle in or on any public property or right-of-way. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation;
- (o) Sidewalk vendors shall not discharge any solid or liquid matter onto any public property, and shall immediately clean up any food, grease or other liquid or item related to their sidewalk vending activities that falls on or is otherwise discharged onto public property;
- (p) Sidewalk vendors shall maintain a minimum of a four-foot (4') clear accessible path free from obstructions, including sidewalk vending receptacles and customer queuing area;
- (q) Sidewalk vendors shall not create or set up any seating or table area within the public right-of-way;

- (r) Sidewalk vendors shall comply with the noise standards set forth in Chapter XIII of Title 13 of this Code;
- (s) Sidewalk vendors shall ensure that all required insurance including any endorsement is in effect prior to conducting any sidewalk vendor activities and maintained for the duration of the permit;
- (t) Upon request, sidewalk vendors must provide a receipt for any merchandise or food sold to a customer; and
- (u) Sidewalk vendors shall ensure that any employee thereof or other person engaged in any sidewalk vending activity on their behalf must conform to the applicable provisions of state law regarding the minimum ages and hours of employment.

9-191.5 Prohibited Activities and Locations.

- (a) Sidewalk vendors shall comply with all operating conditions including those conditions set forth in section 9-191.4.
- (b) Sidewalk vending receptacles shall not touch, lean against or be affixed at any time to any building or structure including but not limited to lampposts, parking meters, mailboxes, traffic signals, fire hydrants, benches, bus shelters, newsstands, trash cans or traffic barriers.
- (c) Sidewalk vendors shall not engage in any of the following activities:
 - 1. Renting merchandise to customers;
 - 2. Displaying merchandise or food that is not available for immediate sale;
 - 3. Selling of alcohol, marijuana, adult oriented material, tobacco products, products that contain nicotine or any product used to smoke/vape nicotine or marijuana;
 - 4. Using an open flame on or within any sidewalk vending receptacle;
 - 5. Using an electrical outlet or power source that is owned by the city or another person other than the sidewalk vendor;
 - 6. Conducting sidewalk vending activities:
 - i. Anywhere in the city between the hours of 11:00 p.m. and 7:00 a.m. daily, unless the sidewalk vendor is operating within five hundred (500) feet of another business open to the public that is legally operating during those hours, in which case sidewalk vendors may operate during the hours in which the adjacent business is legally open to the public;
 - ii. On sidewalks or pathways directly adjacent to or within residentially zoned areas, between 5:00 p.m. and 9:00 a.m. daily;
 - iii. Anywhere in any park while the park is closed pursuant to the provision of section 12-23; and
 - iv. In such a manner as to block access to a fire hydrant.
 - 7. Continuing to offer food or merchandise for sale, following, or accompanying any person who has been offered food or merchandise after the person has asked the sidewalk vendor to leave or after the person has declined the offer to purchase food or merchandise;
 - 8. Knowingly making false statements or misrepresentations during the course of offering food and/or merchandise for sale regarding those items of food and/or merchandise;
 - 9. Blocking or impeding the path of the person(s) being offered food or merchandise to purchase;

10. Making any statement, gesture, or other communication which a reasonable person in the situation of the person(s) being offered food or merchandise to purchase would perceive to be a threat and which has a reasonable likelihood to produce in the person(s) a fear that the threat will be carried out;
 11. Touching the person(s) being offered food or merchandise without that person(s)' consent;
 12. Interfering with any person engaged in or observing an organized recreational or sporting activity being conducted in or adjacent to any park or other public area, by blocking, distracting or impeding the movement or view of any such person or otherwise disrupting the recreational or sporting activity;
 13. Advertising any product or service that is not related to the food or merchandise being offered for immediate sale; and/or
 14. Placing sidewalk vending receptacles outside of any pathway or sidewalk when engaging in sidewalk vending activities.
- (d) Sidewalk vendors shall not engage in sidewalk vending activities at the following locations:
1. Any capital facility or any path or sidewalk adjacent thereto, including but not limited to the Civic Center;
 2. Any public property that does not meet the definition of a sidewalk or pathway including, but not limited to, any alley, trail, bike path, square, street, street end, or parking lot;
 3. On any bike path, or on a mixed use path where both bicycles and pedestrians are permitted;
 4. Stationary sidewalk vendors may not operate on any sidewalk or pathway that is less than eight feet (8') wide;
 5. Mobile sidewalk vendors may not operate on any sidewalk or pathway that is less than four feet (4') wide;
 6. On any sidewalk, pathway or other area while public access to such area is posted as being closed or otherwise limited;
 7. On any city owned or controlled sidewalk or path immediately adjacent to the Orange County Fairgrounds during the time the Orange County Fair is in session;
 8. Within Fairview Park, unless pursuant to the terms of a special event permit;
 9. Within two hundred (200) feet of:
 - i. A police station;
 - ii. A fire station;
 - iii. Any capital facility;
 - iv. A permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet;
 - v. An area designated for a special event, pursuant to permit issued, or when sponsored, by the city, during the limited duration of the special event, if the city provides the sidewalk vendor any notice, business interruption mitigation, or other rights the City provided to any affected businesses or property owners under the city's special event permit, unless the special event permit or city sponsorship affirmatively includes provisions allowing for sidewalk vending; or
 - vi. Any construction activities in or on the public-right-of way.
 10. Within one hundred (100) feet of:

- i. A public or private school, a place of worship, or a child day-care facility;
 - ii. The intersection of a street and a sidewalk;
 - iii. Any public picnic area, playground area or playground equipment;
 - iv. The portion of any city facility that is renting merchandise or selling food to the public or where the rental merchandise is stored;
 - v. Any police officer, firefighter, lifeguard or emergency medical personnel who are actively performing their duties or providing services to the public; or
 - vi. If vending food, a dog park.
11. Within twenty-five (25) feet of a:
- i. Public swimming pool;
 - ii. Curb which has been designated as white, yellow, green, blue, or red zone, or a bus zone;
 - iii. Automated teller machine;
 - iv. Driveway, alley, or entrance to a parking lot or parking garage;
 - v. Entrance or exit to a building, structure or facility;
 - vi. Storm water catchment basin;
 - vii. Trash receptacle, bike rack, bench, bus stop, restroom, or similar public use items; or
 - viii. Any public community center, athletic field, softball/baseball diamond, basketball court, handball court, pickleball court, tennis court, soccer field, golf course or volleyball court.
- (e) Stationary sidewalk vendors shall not sell food or merchandise or engage in any sidewalk vending activities:
- 1. At any park where the city has signed an agreement for concessions with the operator of the park that exclusively permits the sale of food or merchandise by the concessionaire; or
 - 2. On sidewalks or pathways directly adjacent to or within residential areas.

9-191.6 Penalties.

- (a) Violations of this article shall not be prosecuted as infractions or misdemeanors and shall only be punished by civil citation issued pursuant to Article II of Title 1 subject to the limitations of this section.
- (b) Any violation of this article may be assessed an administrative fine in an amount authorized by Government Code section 51039 or any applicable successor section thereto as set forth in a schedule of fines adopted by resolution of the city council.
- (c) The issuing officer may rescind or revoke a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations; and
- (d) The provisions and limitations of this section shall not apply to a violation of any other provision of this Code or other law or regulation, including but not limited to the California Retail Food Code.

9-191.7 Appeals.

- (a) Appeals of civil citations shall be had pursuant to the administrative review provisions of Article II of Title 1.

1. A person cited may request an ability-to-pay determination, contest that there was a violation of this Code, that he or she is the responsible person, or otherwise appeal the citation by filing a request for an administrative review pursuant to section 1-42. Notwithstanding the time limits set forth in Article II of Title 1, any person requesting a hearing and ability-to-pay determination may file the request pursuant to Government Code section 51039(f)(1);
 2. A person cited may file for a hardship waiver in accordance with section 1-44;
 3. In addition to and notwithstanding the limitation of the powers set forth in Article II of Title 1, the hearing officer shall have the power to:
 - i. Reduce the fine based upon the person's ability to pay the fine; or
 - ii. If the hearing officer finds the person meets the criteria described in subdivision (a) or (b) of Government Code section 68632, the hearing officer shall order the city to accept, in full satisfaction, twenty (20) percent of the administrative fine imposed pursuant to this article;
 4. All appeals of civil citations shall be conducted in accordance with section 1-46; and
 5. Failure to pay an administrative fine pursuant to this article shall not be punishable as an infraction or misdemeanor, nor shall fines, fees, assessments, or any other financial conditions beyond those authorized by this article be assessed.
- (b) Decisions of the issuing officer to deny, rescind and/or revoke a permit may be appealed pursuant to section 9-121.

9-191.8 Enforcement.

The provisions of this article may be enforced and civil citations may be issued by persons authorized to do so by the city manager pursuant to section 2-114.

9-191.9 Impoundment.

All police officers, code enforcement officers, inspectors and civilian police field personnel of the City are authorized and empowered to remove or cause to be removed and/or stored any sidewalk vending receptacle placed, parked, and/or left unattended upon any public property contrary to the provisions of this Article and to destroy any perishable contents thereof prior to storage, pursuant to the provisions of sections 11-306 through 11-328. If physically present, the owner or operator shall first be given an opportunity to remove the receptacle. The owner or operator of the receptacle shall be liable to the City for any reasonable storage charges.

Section 3. Environmental Compliance. Pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) the ordinance is not a "project" and further, that it can be seen with certainty that there is no possibility that the ordinance in question may have a significant effect on the environment, either directly or indirectly, and that therefore no environmental review under the CEQA is required, pursuant to CEQA Guidelines Section 15061(b)(3).

Section 4. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 5. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 6. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption.

Section 7. Certification. The City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

PASSED AND ADOPTED this 15th day of October, 2019.

Katrina Foley, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing Ordinance No. 19-XX was duly introduced for first reading at a regular meeting of the City Council held on the 15th day of October, 2019, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 15th day of October, 2019.

BRENDA GREEN, CITY CLERK

(SEAL)