

ORDINANCE NO. 2019-459

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA TO AMEND SECTION 5.05.020 OF CHAPTER 5 OF TITLE 5, ADD SECTION 5.05.230 OF CHAPTER 5 OF TITLE 5 OF THE ARVIN MUNICIPAL CODE AND TO ADOPT TITLE 5, CHAPTER 6 OF THE ARVIN MUNICIPAL CODE REGULATING SIDEWALK VENDORS

WHEREAS, the State of California has recently enacted S.B. No. 946, codified as Government Code sections 51036 through 51039; and

WHEREAS, Government Code section 51037 provides that “[a] local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039;” and

WHEREAS, changes to Government Code sections 51036 through 51039 require updates to the Arvin Municipal Code; and

WHEREAS, the City Council desires to amend section 5.05.020 of Chapter 5 of Title 5, Add Section 5.05.230 of Chapter 5 of Title 5 exempting sidewalk vendors from regulation; and

WHEREAS, the City Council also desires to add title 5, chapter 6 to the Arvin Municipal Code to provide sidewalk vendors with clear and concise regulations to prevent safety and traffic hazards, as well as to preserve the peace, safety and welfare of the community.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY ARVIN DOES ORDAIN AS FOLLOWS:

SECTION 1. Pursuant to CEQA Guidelines, section 15061(b)(3), the City Council determines with certainty there is not a possibility that this project may have a significant effect on the environment. This is because State law already provides for the use of public property by sidewalk vendors, and the ordinance merely provides additional regulations to limit sidewalk vendor to operate within specific parts of the public right-of-way, as well as to additional requirements regulating the time, place, and manner of sidewalk vending, as specified, all of which are also directly related to objective health, safety, or welfare concerns. None of these expand existing uses or operations in such a way to cause a significant, adverse effect on the environment. As such, this project is not subject to CEQA.

SECTION 2. Subsection E of Section 5.05.020 of Chapter 5 of Title 5 of the Arvin Municipal Code is amended to read as follows:

5.05.020 - Definitions.

...

E. "Peddler" means and includes any person, whether a resident of the city or not, who, not incidental to similar activities regularly conducted from a fixed place of business,

travels by foot, wagon, motor vehicle or any other type of vehicle, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruit, truck garden products, farm products, dairy products, bakery products, groceries, other products (hereinafter referred to in this chapter as "products"), offering and exposing the same for retail sale, or making retail sales of the same and delivering the same to purchases, or who sells or offers the same for sale from a motor vehicle or mobile unit or who solicits, exposes or offers the same for retail sale for delivery at a later time. Notwithstanding, "peddler" shall not include "sidewalk vendors" as defined by section 5.05.230.

SECTION 3. Chapter 5 of Title 5 of the Arvin Municipal Code is amended to add Section 5.05.230 to read in its entirety as follows:

5.05.230 – Exemption—Sidewalk Vendors.

"Sidewalk vendors," as defined in Government Code section 51036 and section 5.06.020 of the Arvin Municipal Code, shall be exempt from the requirements of this chapter and shall instead be regulated pursuant to title 5, chapter 6 of the Arvin Municipal Code.

SECTION 3. Title 5 of the Arvin Municipal Code is hereby amended to add the following Chapter 5.06. as follows:

Sidewalk Vending

Sections:

5.06.010 Purpose.

5.06.020 Definitions.

5.06.030 Sidewalk Vending License.

5.06.040 License Term and Renewal.

5.06.050 Business License Requirement.

5.06.060 Application.

5.06.070 Sales Tax Reporting.

5.06.080 General Provisions for Sidewalk Vending.

5.06.090 Stationary Sidewalk Vendor Operational Standards.

5.06.100 Roaming Sidewalk Vendors.

5.06.110 Roaming Sidewalk Vending Locations.

5.06.120 Roaming Sidewalk Vendor Operational Standards.

5.06.130 Additional Operational Standards in Public Parks.

5.06.140 Denial, Suspension, and Revocation.

5.06.150 Penalty for Violation.

5.06.160 Vending Without a Permit.

5.06.010 – Findings and Purpose.

The purpose of this chapter is to regulate sidewalk vending activities in order to protect public health, safety, and welfare, while accommodating commercial uses that generally promote an active and social pedestrian environment within appropriate areas of the city.

5.06.020 -- Definitions.

As used in this chapter:

- A. "Business license" shall mean a city business license as provided in chapter 5.04 of the Arvin Municipal Code.
- B. "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.
- C. "Sidewalk vending license" shall mean a license issued for the purpose of sidewalk vending pursuant to section 5.06.30.
- D. "Sidewalk vendor" shall mean a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, except that vending from a motorized conveyance shall be permitted for roaming sidewalk vending as set forth in section 5.06.120, or from one's person, upon a public sidewalk or other pedestrian path, but excluding any conveyance which may be drawn or towed by a motorized vehicle. A sidewalk vendor can be roaming or stationary.
- E. "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.
- F. "Special event" shall mean a crafts fair, exhibition, parade, celebration, dance, amusement entertainment, or other event consisting of a collection of food, beverage, art, crafts, or souvenir sales by various individuals or persons, when the crafts fair, exhibition, parade, celebration, dance, amusement entertainment or other event conducted by the city, a nonprofit or charitable organization, association, or institution and permitted by the City.

5.06.030 -- Sidewalk Vending License.

No person shall operate as a sidewalk vendor within the City without first obtaining a sidewalk vending license from the city, except under the following conditions:

- A. A sidewalk vending vehicle or pushcart owned or operated by any public agency;

- B. Persons delivering goods, wares, merchandise, fruits, vegetables, or foodstuffs upon order of, or by agreement with, a customer from a store or other fixed place of business or distribution;
- C. Vendors participating in farmer's markets or other special events as allowed by the city;
- D. An event at a school facility or an assembly use facility, if the vendor is operating in partnership with the organization conducting the event and is located on the site of the event (i.e., not in the public right-of-way);
- E. Sidewalk vendors that only sell, distribute, display, solicit, or offer sale of items that are inherently communicative and have nominal utility apart from its communication (e.g., newspapers, leaflets, pamphlets, buttons, etc.).

5.06.040 -- License Term and Renewal.

All permits are valid for one year unless revoked or suspended prior to expiration. An application to renew a permit shall be made not later than 90 days before the expiration of the current permit. A valid business license shall be applied for with the City Clerk or renewed concurrently with the sidewalk vending license each year.

5.06.050 -- Business License Requirement.

It is unlawful for any person to operate as a sidewalk vendor in the city without having a valid business license and sidewalk vending license obtained from the city.

5.06.060 -- Application.

- A. The application for a business license to operate as a sidewalk vendor shall be made pursuant to the requirements of title 5, chapter 4 of this code.
- B. The application for a sidewalk vending license shall be signed by the applicant and shall include all of the applicable information required under title 5, chapter 4 of this code, and shall further include the following information:
 1. A description of the type of food, beverage, or merchandise to be sold, as well as hours of operation;
 2. A description of the cart or vehicle, if any, and any additional information that will explain the proposed use;
 3. A description and photograph (including colors and any signs) of any cart or vehicle to be used in the operation of the business;

4. If operating in state right-of-way, the vendor shall provide evidence of the state's authorization;
 5. If operating on private property or on a city-owned parking lot, plaza, or other city-owned area (other than a public sidewalk or park), the sidewalk vendor shall provide evidence of the property owner's written authorization.
 6. For each person with a ten percent or greater financial interest in a business that engages in roaming sidewalk vending, a list, signed under penalty of perjury, of each conviction of such person and whether such conviction was by verdict, plea of guilty, or plea of no contest. The list shall for, each conviction, set forth the date of arrest, the offense charged, and the offense of which the person was convicted. A person who acquires a ten percent or greater financial interest in the business that operates the roaming vendor vehicle during the term of the permit issued pursuant to this code shall immediately so notify the city clerk and comply with this subsection.
 7. Proof of insurance policy, issued by an insurance company licensed to do business in the state, protecting the permittee and the city from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the permits contemplated herein. Such insurance shall name as additional insured the city and shall provide that the policy shall not terminate or be canceled prior to the expiration date without thirty (30) days advance written notice to the city.
 8. Valid permit issued by the Kern County Public Health Services Department if the sidewalk vendor intends to sell food or any other item requiring a county health department permit.
 9. If selling food or beverages, evidence of compliance with Health & Safety Code § 114315(a), as may be amended. Such evidence may include, but is not limited to, written permission from a private business owner for use of the business's toilet and hand washing facility, a printed or electronic map showing the location of a compliant public toilet and hand washing facility, or similar documented evidence of compliance.
- C. Not later than 60 days after the filing of a completed application for a sidewalk vending license, the applicant shall be notified of the decision on the issuance or denial of the sidewalk vending license.
1. Fees shall be determined by council resolution and shall be paid prior to issuance of a permit.
 2. Locations for vending shall be approved by the City Manager or designee.

3. In addition to any locational restrictions found in this chapter, vending locations may be further limited if the limitation is directly related to health, safety or welfare concerns, including but not limited to:
 - a. The ability of the site to safely accommodate the use;
 - b. Pedestrian safety.
 - c. Vending locations may change only upon written request by an applicant and approval by the City Manager or designee.

5.06.070 -- Sales Tax Reporting.

All sidewalk vendors shall be subject to reporting of tax revenues generated within the City of Arvin to the State Board of Equalization, and to show proof of a seller's permit obtained by the State Board of Equalization.

5.06.080 -- General Provisions for Sidewalk Vending.

- A. Operating as a stationary sidewalk vendor is prohibited in all residential zones of the city.
- B. No vending cart shall exceed four feet in width, eight feet in height, or eight feet in length.
- C. All sidewalk vendors that prepare or sell food shall comply with the following requirements:
 1. All equipment installed in any part of the cart shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.
 2. All utensils shall be securely stored in order to prevent their being thrown from the cart or vehicle in the event of a sudden stop, collision or overturn. A safety knife holder shall be provided to avoid loose storage of knives.
 3. Compressors, auxiliary engines, generators, batteries, battery chargers, gas-fueled water heaters, and similar equipment shall be installed so as to be hidden from view to the extent possible and be easily accessible.
 4. All vendors must possess a valid permit, certificate, or other authorization as required by the Kern County Public Health Services Department if the sidewalk vendor intends to sell food or any other item requiring a county Public Health Services Department Health permit.

- D. All permits shall be displayed in a visible and conspicuous location at all times during the operation of the vending business.

5.06.090 -- Stationary Sidewalk Vendor Operational Standards.

It shall be prohibited for any stationary sidewalk vendor to operate under any of the following conditions:

- A. Vend between 2:00 a.m. and 6:00 a.m. unless in conjunction with a permitted special event;
- B. Leave any stand unattended;
- C. Store, park, or leave any stand overnight on any public street, sidewalk, or park;
- D. Sell food or beverages for immediate consumption unless there is a litter receptacle available for patrons' use;
- E. Leave any location without first disposing all trash or refuse remaining from sales conducted. Trash and refuse generated by the vending cart operations shall not be disposed of in public trash receptacles;
- F. Discharge solids or liquids to the street or a storm drain;
- G. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on, or under the stand;
- H. Set up, maintain, or permit the use of any additional table, crate, carton, rack, or any other device to increase the selling or display capacity of his/her stand where such terms have not been described by his or her application;
- I. Solicit or conduct business with persons in motor vehicles;
- J. Sell anything other than that which he or she is permitted to vend;
- K. Sound or permit the sounding of any device that produces a loud and raucous noise or any noise in violation of the City's Noise Restriction Ordinance, Section 5.05.170 as may be amended, or use or operate any loud speaker, public address system, radio, sound amplifier, or similar device to attract the attention of the public;
- L. Vend without the insurance coverage previously specified;
- M. Operate within fifty (50) feet of a fire hydrant or twenty-five (25) feet of a transit stop;

- N. Operate within fifty (50) feet of the outer edge of a driveway or vehicular entrance to public or private property in commercial, business park, mixed use, or industrial zones;
- O. Vend from the exposed street or alley and/or traffic side of the vending cart;
- P. Operate in a manner that does not maintain four (4) feet of clear space on a public sidewalk;
- Q. Operate as a stationary sidewalk vendor in exclusively residential zones;
- R. Operate as a stationary sidewalk vendor in any park for which the City has a signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire(s).
- S. Operate as a sidewalk vendor within five hundred (500) feet of any public sidewalk, street, right-of-way, or other public property approved for commercial filming or a special event the sidewalk vendor is not permitted to take part in;
- T. Operate in violation of any other generally applicable law;
- U. Display off-site signs. No signs are allowed, except those approved in the application which identify the name of the product or the name of the vendor and the posting of prices on the cart. Signs with intermittent, flashing, moving, or blinking light, or varying intensity of light or color, are not permitted.
- V. If selling food or beverages, operate without evidence of compliance with Health & Safety Code § 114315(a). Such evidence may include, but is not limited to, written permission from a private business owner for use of the business's toilet and hand washing facility, a printed or electronic map showing the location of a compliant public toilet and hand washing facility, or similar documented evidence of compliance.

5.06.100 -- Roaming Sidewalk Vendors.

Roaming vending activity may occur within a public or private open space not including a public sidewalk, parking lot, plaza, or from a vehicle legally parked on a street, in all commercial, mixed-use, business park and industrial zones in compliance with the standards in this Chapter. Roaming vending activity may also occur from a vehicle legally parked on the street in all residential zones, in compliance with the standards in this chapter.

5.06.110 -- Roaming Sidewalk Vending Locations.

Roaming vending may take place within the commercial, mixed-use, business park, industrial, and/or residential zones, with individual locations approved by the City Manager or designee, subject to the following conditions:

- A. Vending locations shall be designated based on the ability of the site to safely accommodate the use.
- B. Vending locations may change only upon written request by an applicant and approval by the City Manager or designee.
- C. All locations of vending stands shall be considered in relation to right-of-way configurations and pedestrian safety.

5.06.120 -- Roaming Sidewalk Vendor Operational Standards.

It shall be prohibited for any roaming sidewalk vendor to operate under any of the following conditions:

- A. Vend between 2:00 a.m. and 6:00 a.m. unless in conjunction with a Special Event;
- B. Leave any stand or motor vehicle unattended;
- C. Store, park, or leave any stand overnight on any public street or sidewalk, or park any motor vehicle other than in a lawful parking place;
- D. Sell food or beverages for immediate consumption unless there is a litter receptacle available for patrons' use;
- E. Leave any location without first disposing all trash or refuse remaining from sales conducted. Trash and refuse generated by the vending cart operations shall not be disposed of in public trash receptacles;
- F. Discharge solids or liquids to the street or a storm drain;
- G. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on, or under the stand or vehicle;
- H. Set up, maintain, or permit the use of any additional table, crate, carton, rack, or any other device to increase the selling or display capacity of his/her stand where such terms have not been described by his or her application;
- I. Solicit or conduct business with persons in motor vehicles;
- J. Sell anything other than that which he or she is permitted to vend;

- K. Sound or permit the sounding of any device that produces a loud and raucous noise, or any noise in violation of the city's noise ordinance or use or operate any loud speaker, public address system, radio, sound amplifier, or similar device to attract the attention of the public;
- L. Vend without the insurance coverage previously specified;
- M. Operate within fifty (50) feet of a fire hydrant or twenty-five (25) feet of a transit stop;
- N. Operate within twenty-five (25) feet of the outer edge of a driveway or vehicular entrance to public or private property in residential zones;
- O. Operate within fifty (50) feet of the outer edge of a driveway or vehicular entrance to public or private property in commercial, business park, mixed use, or industrial zones;
- P. Vend from the exposed street or alley and/or traffic side of the vending cart or vehicle;
- Q. Vend while parked illegally;
- R. Vend from any street parking space other than a space parallel to the curb;
- S. Operate in a manner that does not maintain four (4) feet of clear space on a public sidewalk;
- T. Operate in any manner or location that blocks any citizen or service entry or exit from any business or residence;
- U. Operate from any motor vehicle not licensed by the department of motor vehicles.
- V. Display off-site signs. No signs are allowed, except those approved in the application which identify the name of the product or the name of the vendor and the posting of prices on the cart. Signs with intermittent, flashing, moving, blinking light, or varying intensity of light or color, are not permitted.

5.06.130 -- Additional Operational Standards in Public Parks.

In addition to the operational standards in section 5.06.090 and section 5.06.120, the following shall also be prohibited for any sidewalk vendor operating in a public park:

- A. Operate outside the hours of operation of the park;
- B. Operate more than six (6) feet from any walking or bicycling pathway in the park;

- C. Operate within fifty (50) feet of any other sidewalk vendor in the park;
- D. Operate on, or within twenty-five (25) feet of, any sports field or playground equipment area;
- E. Utilize any bench, table, barbeque pit, covered gathering area, or other publicly-owned structure or amenity in the park in any way as part of the sidewalk vending operation;
- F. Operate within twenty-five (25) feet of any bench, table, barbeque pit, covered gathering area, or other publicly-owned structure or amenity in the park.

5.26.140 -- Denial, Suspension, and Revocation.

Any permit may be denied, suspended, or revoked for any of the following causes:

- A. Fraud or misrepresentation contained in the application for any permit or license required under this chapter.
- B. Fraud or misrepresentation made in the course of carrying on the business of vending.
- C. Conduct of the permitted business in such manner as to create a public nuisance, or constitute a danger to the public health, safety, or welfare.
- D. Conduct in violation of the provisions of this chapter.
- E. Denial, void, or revocation of the business license shall result in revocation of the sidewalk vending license.

5.06.150 -- Penalty for Violation.

A violation of these sidewalk vending requirements, other than failure to possess a valid sidewalk vending permit, is punishable by the following:

- A. An administrative fine of one hundred dollars (\$100.00) for a first violation.
- B. An administrative fine of two hundred dollars (\$200.00) for a second violation within one year of the first violation.
- C. An administrative fine of five hundred dollars (\$500.00) for each additional violation within one year of the first violation.
- D. Rescission of a sidewalk vending permit for the term of that permit upon the fourth violation or subsequent violations.

5.06.160 -- Vending Without a Permit.

Vending without a sidewalk vending license issued by the City is punishable by the following:

- A. An administrative fine of two hundred fifty dollars (\$250.00) for a first violation.
- B. An administrative fine of five hundred dollars (\$500.00) for a second violation within one year of the first violation.
- C. An administrative fine of one thousand dollars (\$1,000.00) for each additional violation within one year of the first violation.
- D. Upon proof of a valid sidewalk vending license issued by the City, any administrative fines imposed under this subsection for vending without possessing a copy of the permit shall be reduced to the administrative fines set forth in section 5.06.150.
- E. All fines imposed pursuant to sections 5.06.150 and 5.06.160 shall be subject to an ability-to-pay determination as described in California Government Code section 51039(f). Concurrently with issuing a citation for such fines to a person, the City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. The provisions of these Sections shall be liberally construed as necessary to effectively carry out its purposes, which are hereby found and declared to be in furtherance of the public health, safety and convenience.

SECTION 7. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, section 36933.

SECTION 8. This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption.

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I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the 28th day of May 2019, and adopted the Ordinance after the second reading at a regular meeting held on the 25th day of June 2019, by the following roll call vote:

AYES: CM Martinez, CM Trujillo, CM Franetovich, MPT Robles, Mayor Gurrola

NOES: _____

ABSTAIN: _____

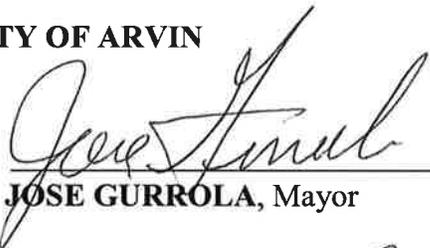
ABSENT: _____

ATTEST



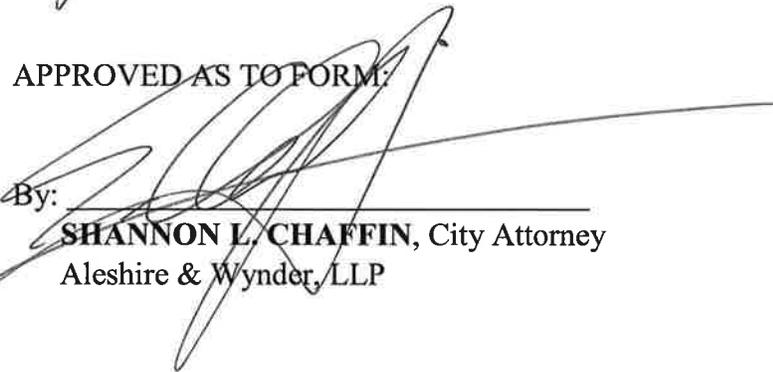
CECILIA VELA, City Clerk

CITY OF ARVIN

By: 

JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: 

SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.