**ORDINANCE NO. O-2020-005**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH, CALIFORNIA ADDING CHAPTER 12.22: SIDEWALK VENDING, TO THE CITY OF PISMO BEACH MUNICIPAL CODE**

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**WHEREAS,** on September 18, 2018, then-Governor Brown signed into law Senate Bill 946, adding Government Code Sections 51036–51039, which impose limits on how local authorities may regulate sidewalk vending; and

**WHEREAS,** prior to the adoption of SB 946, the City of Pismo Beach prohibited vending in very limited portions of the City's beach safety zone, under Pismo Beach Municipal Code Section 12.20.185; and

**WHEREAS,** the prohibition on vending set forth in Section 12.20.185 was adopted in part to address concerns regarding pedestrian traffic flow in the Pier area; and

**WHEREAS,** as of the date of this Ordinance, conditions of peril to the safety of persons and property still exist within the city of Pismo Beach, due to the novel coronavirus (COVID-19); and

**WHEREAS**, the City Council adopts this ordinance under the authority of SB 946, and the City Council finds the regulations and requirements provided in this ordinance are directly related to the City's objective in protecting the health, safety, and welfare of its residents, businesses, and visitors; and

**WHEREAS**, the City Council finds this ordinance regulates the time, place, and manner of sidewalk vending, as specified, to address health, safety, and welfare concerns; and

**WHEREAS**, the City Council finds the regulations in this ordinance, including, but not limited to those regulations governing minimum sidewalk widths, sidewalk vending receptacle sizes, distance requirements, and food and merchandise storage are necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 and other disability access standards; and

**WHEREAS**, the City Council finds this ordinance is necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; and

**WHEREAS**, the City Council finds this ordinance is necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and recreational character of the City.

**NOW, THEREFORE,** the City Council of the City of Pismo Beach does ordain as follows:

**SECTION 1.**

The recitals set forth above are incorporated herein as findings in support of this ordinance.

**SECTION 2.**

A new Chapter 12.22 is hereby added to Title 12 of the Pismo Beach Municipal Code to read as set forth in **Exhibit A**.

**SECTION 3.**

This ordinance shall become effective immediately upon passage and adoption hereof, as it is an urgency ordinance intended to immediately protect the public welfare, health, and safety.

**SECTION 4.**

Under the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3), this ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, such as the adoption of the regulations contained herein, the activity is not subject to CEQA.

**SECTION 5.**

This ordinance shall not be interpreted in any manner to conflict with controlling provisions of state or federal law, including, without limitation, the Constitution of the State of California. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. If this ordinance, or any section, subsection or clause of this ordinance shall be deemed unconstitutional or invalid as applied to a particular appeal, the validity of this ordinance and its sections, subsections, and clauses in regard to other contracts shall not be affected.

**SECTION 6.**

The City Clerk shall certify to the passage and adoption of this Ordinance, shall enter the same in the book of original ordinances of the City and shall make a minute of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted.

Before the expiration of fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause the same to be posted in three public places within the City of Pismo Beach, to wit: 1) City Hall, 760 Mattie Road, Pismo Beach, 2) U.S. Post Office, Shell Beach Road, Pismo Beach, 3) U.S. Post Office, Crest Drive, Pismo Beach.

**UPON MOTION OF** Council Member Reiss, seconded by Council Member Blake, the foregoing urgency ordinance was adopted by the City Council of the City of Pismo Beach this 15th day of September 2020, by the following vote:

| | | |
|---|---|---|
| **AYES:** | **5** | **Reiss, Blake, Guthrie, Howell, Waage** |
| **NOES:** | **0** | |
| **ABSENT:** | **0** | |
| **ABSTAIN:** | **0** | |
| **RECUSED:** | **0** | |

**Approved:**

Ed Waage

**Ed Waage, Mayor**

**Attest:**

**Erica Inderlied, City Clerk**

**APPROVED AS TO FORM:**

**David M. Fleishman, City Attorney**

CITY OF PISMO BEACH INCORPORATED APR. 25 1946 STATE OF CALIFORNIA

**CERTIFICATION OF ORDINANCE POSTING**
Government Code §40806

STATE OF CALIFORNIA }
} ss.
COUNTY OF SAN LUIS OBISPO }

I, Erica Inderlied, the City Clerk of the City of Pismo Beach, California, hereby certify in accordance with California Government Code Section 40806 that the foregoing document is a true and correct copy of **Ordinance No. O-2020-005**, titled **AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH, CALIFORNIA ADDING CHAPTER 12.22: SIDEWALK VENDING, TO THE CITY OF PISMO BEACH MUNICIPAL CODE,** and that I caused the same to be duly posted in three public places within the City within fifteen (15) days of adoption thereof, pursuant to the requirements of California Government Code Section 36933.

Dated this 17th day of September 2020. Witness my hand and official seal.

Erica Inderlied, City Clerk

## Exhibit A

## Chapter 12.22 SIDEWALK VENDING

### 12.22.010 Purpose.

The purpose of this chapter is to establish a sidewalk vendor permitting and regulatory program. The provisions of this Chapter allow the City to encourage small business activities by removing total prohibitions on sidewalk vending and providing regulation and enforcement of unpermitted sidewalk vending activities to protect the public health, safety, and welfare.

A. The City Council hereby finds that, to promote the health, safety, and welfare, restrictions on sidewalk vending are necessary in part to:

1. Provide reasonable access for sidewalk vending activities in portions of the City while preserving the use and maintenance of parks, sidewalks, pathways, poles, posts, traffic signs or signals, hydrants, restrooms, trash receptacles, firefighting apparatus, mailboxes, public benches and/or planters, as well as access to locations used for public transportation services.

2. Ensure no interference with pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles.

3. Ensure no interference with barriers designed to stop vehicles and prevent injury to people.

4. Ensure no interference with the performance of public safety officers including police, firefighters, lifeguards, and emergency medical services personnel.

5. Reduce exposure to the City for personal injury or property damage claims and litigation.

6. Ensure the safe sale of food and merchandise in the public right-of-way, by providing the public a simple way to ensure sidewalk vendors prepare food safely and according to San Luis Obispo County Department of Public Health requirements.

7. Prevent unsanitary conditions and ensure trash and debris in the areas vending is taking place are removed by sidewalk vendors.

8. Ensure that visibility, sight lines, and accessibility for vehicular and pedestrian traffic on sidewalks and other rights of way are protected while accommodating sidewalk vendor equipment.

9. Mitigate the impacts of sidewalk vending activity and protect the unique characteristics of the City by maximizing public access to and along the coast.

B. The City Council hereby finds that the unique characteristics of the City require certain restrictions on sidewalk vending activities as follows:

1. The City Council finds that the existence in the City of sidewalk vendors seeks to and does draw patrons to their food and merchandise. This can create serious safety problems by impacting the ability of pedestrians to move safely on sidewalks and through crosswalks and impeding the response time of safety personnel, particularly in downtown Pismo Beach, at the beach, in City parks, and in residential areas. Sidewalk vendors can also impact access to and egress from businesses. This chapter imposes reasonable time, place, and manner restrictions on sidewalk vendors to the extent necessary to ensure the safety of sidewalk vendors, their patrons, the general public and to prevent unreasonable interference with residents' enjoyment of peace and quiet in the City.

2. City parks provide passive and active recreational opportunities, and restrictions on sidewalk vending activity are necessary to safeguard coastal access, and to protect the natural resources, recreational and sport opportunities, and scenic and natural character of these parks.

3. The City seeks to preserve the peace and quiet of the residential zones of the City, by prohibiting commercial activities such as sidewalk vendors. Many of the sidewalks and pathways in the City are less than eight (8) feet wide, and sidewalk vending activity in these areas would unreasonably interfere with the flow of pedestrians and disrupt access for persons with disabilities.

**12.22.020 Sidewalk vendor 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 Sidewalk Vendor Permit from the Administrative Services Department.

B. A written application for a sidewalk vendor permit shall be filed with the Administrative Services Department on a form provided by the City. Such application shall be accompanied by a nonrefundable application fee in such amount as established by resolution of the City Council. Until such time as the City Council amends its fee schedule to provide for this fee, the combined business

license fee and Sidewalk Vendor Permit shall be $100.00, in addition to the business license application fee and SB 1186 fee. A permit shall be valid for the business license year from October 1st through September 30th of each year, and shall expire and become null and void on the anniversary of its issuance. A person may apply for a permit renewal on a form provided by the City prior to the expiration of their active permit and corresponding business license. Sidewalk vendor permit(s) are non-transferable and any change in ownership or operation of a sidewalk vendor business requires a new permit.

C. The written application shall provide an address where the applicant consents to receive service of process. An acceptable address for this purpose shall include a post office box or private mailbox that complies with California Business & Professions Code Section 17538.5.

**12.22.030 Issuance of permit.**

A. The Administrative Services Director may issue the sidewalk vendor permit if the Director finds based on all of the relevant information that:

1. The sidewalk vendor has provided adequate insurance as determined by the City Attorney to protect the City from liability associated with sidewalk vendor activities, with policy limits not less than $1 million per occurrence and $2 million aggregate, where the City has been named as an additional insured on the sidewalk vendor's insurance policy.

2. The conduct of the sidewalk vendor will not unduly interfere with traffic or pedestrian movement, or interfere with or endanger the public health, safety, or general welfare.

3. 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 sidewalk vendor.

4. The conduct of such sidewalk vending activity will not constitute a fire hazard.

5. The sidewalk vendor has paid all previous administrative fines and completed any other alternative disposition associated in any way with a previous violation of this chapter.

6. The sidewalk vendor has not had a permit revoked within the past twelve (12) months.

7. The sidewalk vendor application contains all required information and the sidewalk vendor has not made a materially false, misleading, or fraudulent statement of fact to the City in the application process.

8. The sidewalk vendor has obtained a business license pursuant to Chapter 5.04.

9. The sidewalk vendor has obtained a valid California Department of Tax and Fee Administration seller's permit.

B. To prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the City's parks, the Administrative Services Director shall authorize no more than five (5) concurrent sidewalk vendor permits for stationary food sales in all (not each) City parks, or no more than five (5) concurrent sidewalk vendor permits for merchandise sales in all (not each) City parks.

C. Because the City has entered into exclusive agreements for vending of merchandise and food in City parks in the Pier Zone defined in Section 12.20.185(a)(4) of this Code, no sidewalk vending permit shall be issued for stationary sidewalk vending activities in City parks in the Pier Zone.

D. To ensure the public's use and enjoyment of natural resources, coastal access and recreational opportunities at the City Pier, to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the City Pier and boardwalk, and to ensure adequate social distancing during such times as public health orders are in effect recommending such social distancing, no sidewalk vending permit shall be issued for sidewalk vending activities on the City Pier or boardwalk adjacent to the City Pier.

**12.22.040 Denial of sidewalk vendor permit.**

A. If the Administrative Services Director finds that the requirements set forth in Section 12.22.030 as applicable have not been met, the Director shall deny the application for the sidewalk vendor permit. The Administrative Services Director shall provide written notice of such denial specifying the ground or grounds of such denial. Notice of denial of the application for the Permit shall be deemed to have been served upon the date it is personally served on the sidewalk vendor, when deposited in the United States mail with postage prepaid and addressed to the sidewalk vendor at the vendor's residence address as set forth in the application for the permit, or when notified by City email to the sidewalk vendor's email address provided to the City when the business license and Permit were issued.

B. Any sidewalk vendor whose application for a sidewalk vendor permit has been denied by the Administrative Services Director may appeal such denial to the City Manager by filing a written notice of appeal with the Administrative Services

Director within ten (10) days following the date of service of the decision and payment of the appeal fee prescribed by resolution of the City Council. The date of filing of said notice of appeal shall be the date the Administrative Services Director receives the notice and appeal fee.

C. To ensure the availability of sufficient sidewalk vendor permits for small businesses for whom sidewalk vending is a primary occupation, any person or entity that maintains a physical location for a business within the City shall be ineligible to apply for a sidewalk vendor permit under this chapter.

D. No person whose permit is finally denied shall be eligible to apply for a new sidewalk vendor permit for a period of one year following such final denial.

**12.22.050 Revocation of permit.**

Any sidewalk vendor permit may be revoked by the Administrative Services Director for good cause shown including but not necessarily limited to any of the following reasons:

A. Falsification of any information supplied by the sidewalk vendor upon which issuance of the permit was based.

B. Failure of the permittee, or any employees or subcontractors of the permittee, to comply with the regulations set forth in this chapter.

C. No sidewalk vendor whose permit is revoked shall be eligible to apply for a new permit for a period of one year following such revocation.

**12.22.060 Appeal process for revocation of a permit.**

Upon receipt of a timely appeal, the City Manager or their designated representative shall hear such appeal within twenty (20) days following the date of such appeal and shall give the sidewalk vendor not less than five (5) days' advance notice of the date of such hearing. The decision of the City Manager shall be based upon the criteria applicable to the issuance or revocation of such permit. The sidewalk vendor shall be notified of the decision of the City Manager by mailed, written notice. The decision of the City Manager shall be final. No revocation of a permit pursuant to this section shall be deemed effective during the pendency of a timely filed appeal until the date of mailing of the City Manager' s decision; provided, however, no permit holder shall operate during any period of time in which the insurance coverage required by this chapter is not in full force and effect.

**12.22.070 Operating conditions.**

Every sidewalk vendor is 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's cart or carried by the Sidewalk Vendor. Food and merchandise shall not be stored, placed, or kept on any public property. If affixed to the cart, the overall space taken up by the cart shall not exceed the size requirements provided in this section.

B. Sidewalk vendors may only sell food and/or merchandise. Sidewalk vendors shall not sell or provide services.

C. The business license and sidewalk vendor permit shall be displayed conspicuously at all times on the cart or on the person of the sidewalk vendor. If multiple sidewalk vendors are staffing a cart, each person shall obtain and wear their vendor permit on their person in a conspicuous manner.

D. All signage and advertising related in any way to the sidewalk vendor shall comply with the City's sign laws. Sidewalk vendors shall not use any electrical, flashing, wind-powered, or animated sign.

E. All sidewalk vendors shall allow a police officer, firefighter, lifeguard, code enforcement officer, health inspector, or other government official charged with enforcing laws related to sidewalk vendor activities, at any time, to inspect their carts for compliance with this chapter.

F. Carts and any attachments thereto shall not exceed a total height of four (4) feet, a total width of four (4) feet, and a total length of four (4) feet.

G. No cart shall contain or use propane, natural gas, gasoline, or other explosive or hazardous materials. No cart shall use electrical power furnished by a generator using any of these substances.

H. Sidewalk vendors selling food shall have in their possession at all times they are conducting sidewalk vending activities, all applicable food vending licenses and permits issued by the County of San Luis Obispo or other regulatory agency.

I. Sidewalk vendors that sell food shall maintain a trash container in or on their cart and shall not empty their trash into public trashcans. The size of the sidewalk vendor's trash container shall count as part of the size limit of a cart.

J. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation. Sidewalk vendors shall immediately clean up any food, grease, or other fluid or item related to sidewalk vending activities that falls on public property.

K. Sidewalk vendors shall ensure that all required insurance is in effect prior to conducting any sidewalk vendor activities and maintained for the duration of the permit.

L. Sidewalk vendors shall not leave their cart unattended.

M. Cart(s) 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, trashcans or traffic barriers.

**12.22.080 Prohibited activities and locations.**

A. Sidewalk vendors shall not engage in any of the following activities:

1. Renting merchandise to customers.

2. Displaying merchandise or food not available for immediate sale.

3. Selling of alcohol, cannabis, adult-oriented material, weapons, tobacco products, products that contain nicotine, or any product used to smoke/vape nicotine or cannabis.

4. Using an open flame on or within any cart.

5. Using an electrical outlet or power source that is owned by the City, or by any other person or entity without the permission of such person or entity.

6. Conducting sidewalk vending activities anywhere in the City between the hours of 8:00 p.m. on one day and 7:00 a.m. the next day, unless businesses in non-residential zones on the same street are permitted to remain open during those hours, in which case sidewalk vending activities shall be conducted no later than the closing hour for such business, nor earlier than the opening hour for such business.

7. Providing or selling any service to any person.

B. Sidewalk vendors shall not engage in sidewalk vending activities in any of the following locations.

1. On any City property that does not meet the definition of a sidewalk including, but not limited to, any multi-modal path, paved or unpaved park pathway, bicycle path, alley, beach, the City Pier, Pier Plaza, boardwalk adjacent to the City Pier, street, street end, or parking lot. As used in this chapter, "sidewalk" shall have the same meaning as the definition of "sidewalk" under California Vehicle Code Section 555.

2. Due to the narrow width of sidewalks, to ensure adequate social distancing during such times as public health orders are in effect recommending such

social distancing, and to ensure compliance with the federal Americans with Disabilities Act of 1990 and other disability access standards, on sidewalks bordering the following streets:

a. Shell Beach Road from Cliff Avenue to Terrace Avenue.
b. Pomeroy Street from Dolliver Street to the Pier Parking lot.
c. Hinds Avenue from Dolliver Street to the Pier Parking lot.
d. Main Street from Dolliver Street to the City beach.
e. Price Street from Bay Street to Ocean View Avenue.
f. Dolliver Street from Bay Street to Ocean View Avenue.
g. Cypress Street from Main Street to Ocean View Avenue.

3. For stationary sidewalk vendors, in any residential zone of the City.

4. Within a five hundred (500)-foot radius of a permitted certified farmers' market during the limited operating hours of that certified farmers' market.

5. Within a five hundred (500)-foot radius of an area designated for a temporary special permit issued by the City pursuant to Chapter 12.16 during the limited duration of the temporary special permit.

6. Within fifty (50) feet of any street intersection.

7. Within fifteen (15) feet of any fire hydrant, or other emergency response equipment or facility.

8. Within twenty-five (25) feet of any driveway or driveway apron.

9. Within fifty (50) feet of a transit stop.

10. Upon or within any roadway, median strip, or dividing section.

11. Upon an outdoor area that is unpaved or unimproved (i.e., is not made from concrete, asphalt, or similar material).

12. Within two hundred fifty (250) feet of any property on which a school building or facility is located during the following times:

a. An hour before school is in session; and

b. An hour before and an hour after school dismissal.

13. Within two hundred fifty (250) feet of any public picnic area, playground area, or playground equipment.

14. Within one hundred (100) feet of any signalized intersections or in any manner that blocks traffic signal equipment and cabinets.

**12.22.090 Violation—Penalty.**

A. Violations of this chapter shall not be prosecuted as infractions or misdemeanors and shall only be subject to administrative citation pursuant to Chapter 1.24. The amount of such fines shall be as set forth in Section 1.24.080.

B. Notwithstanding anything to the contrary in Section 1.24.080, if a sidewalk vendor violates any portion of this chapter and cannot present the citing officer with proof of a valid sidewalk vending permit, the sidewalk vendor shall be assessed administrative fines in the following amounts:

1. A fine not exceeding two hundred fifty dollars ($250) for a first violation.

2. A fine not exceeding five hundred dollars ($500) for a second violation within one year of the first violation.

3. A fine not exceeding one thousand dollars ($1,000) for each additional violation within one year of the first violation.

Upon proof of the existence of a valid permit issued under this chapter, the fines set forth in this subsection shall be reduced to the fines set forth in Section 1.24.080.

**12.22.100 Citation appeals.**

Administrative citations may be appealed pursuant to Chapter 1.24. If the hearing officer finds the person meets the financial criteria described in Government Code Section 68632(a) or (b), and the hearing officer upholds the citation, the hearing officer shall, as part of the notice of decision required under Section 1.24.120, impose an administrative fine equal to no greater than twenty (20) percent of the administrative fine imposed pursuant to this Chapter. The hearing officer may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.