

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING CHAPTER 5.54, "STREET AND
SIDEWALK VENDORS," OF THE MERCED
MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES
ORDAIN AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Section 5.54,
"Street and Sidewalk Vendors" of the Merced Municipal Code is hereby
amended to read as follows:

**"Chapter 5.54
STREET AND SIDEWALK VENDORS**

Sections:

- 5.54.010 Definitions.**
- 5.54.020 Permit Required.**
- 5.54.030 Application for Permit.**
- 5.54.040 Insurance.**
- 5.54.050 Hold Harmless Agreement**
- 5.54.060 Public Property Use Fee.**
- 5.54.070 Business License Tax.**
- 5.54.080 Designated Location – Sidewalk Vendors.**
- 5.54.090 Stopping and Parking – Street Vendors.**
- 5.54.100 Hours of Operation.**
- 5.54.110 Shouting Wares.**
- 5.54.120 Sidewalk Vendor Carts.**
- 5.54.130 Temporary Relocation.**
- 5.54.140 Exemptions.**
- 5.54.150 Revocation of Permit.**
- 5.54.160 Appeal.**

5.54.010 Definitions.

For the purpose of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them:

A. 'Sidewalk vendor' means every person engaged in the business of selling goods, merchandise, food or drink on any sidewalk, parkway, public parking lot, park, pedestrian path or square in the City. A sidewalk vendor is one who uses a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a sidewalk or other pedestrian path. A roaming sidewalk vendor means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

B. 'Street vendor' means every person engaged in the business of selling goods, merchandise, food or drink on any street or alley in the City.

5.54.020 Permit Required.

A. It is unlawful for any street vendor or sidewalk vendor to operate in the City without having first obtained a permit to do so from the City Manager or his/her designee. Permits shall be issued if all the requirements of this Chapter are met and the City Manager or her/his designee finds that granting such permit will not unduly interfere with the rights of the public or significantly contribute to traffic or other safety hazards.

B. All permits shall expire on December 31st of each year. Permits may be renewed on an annual basis.

5.54.030 Application for Permit.

Applications for permits shall be submitted to the City Manager. Every application shall contain the following information:

- A. The name, address, social security number or California driver's license number or identification number, or an individual taxpayer identification number that will be kept confidential, and date of birth of every owner and employee of the business. This information must be kept current.
- B. The number, type, and description of vehicles, wagons or carts to be used, their desired locations (if they are to remain in one location), and whether the permit is for a street vendor or sidewalk vendor.
- C. In addition, every street vendor and sidewalk vendor must comply with the application requirements contained in Sections 5.08.830 through 5.08.890.
 - 1. Violation of the sidewalk vending program regulations and other necessary requirements may result in a warning for the first violation.
 - 2. May result in a one hundred dollar (\$100) fine for the second violation within one year of the first violation.
 - 3. A two hundred dollar (\$200) fine for the third violation, within one year of the first violation.
 - 4. A five hundred dollar (\$500) fine or the permit may be rescinded for a fourth, or subsequent, violation, within a year.

D. Vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (C):

1. An administrative fine not exceeding two hundred fifty dollars (\$250) for the first violation.
2. An administrative fine not exceeding five hundred dollars (\$500) for the second violation within one year of the first violation.
3. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.

E. Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (C), respectively.

F. Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor.

1. A person subject to a fine for violating this Section is entitled to an ability-to-pay determination and shall be provided with instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgement remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.
2. For a person who meets the criteria described in subdivision (a) or (b) of Section

68632, (receiving government assistance or having a low income as defined in the Section) the City shall accept, twenty percent (20%) of the administrative fine imposed.

3. The City 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.

5.54.040 Insurance.

Every street vendor and sidewalk vendor operation shall be required to furnish the City with a certificate of insurance with coverage of five hundred thousand dollars (\$500,000) for property damage and five hundred thousand dollars (\$500,000) for liability or a minimum combined single limit coverage of five hundred thousand dollars (\$500,000) naming the City, its officers, agents and employees as additional insured. The certificate shall provide that thirty (30) days written notice of cancellation will be given to the City.

5.54.050 Hold Harmless Agreement.

Every street vendor and sidewalk vendor shall resign an agreement to indemnify and hold harmless the City, its officers, agents and employees from any and all liability, costs, damages, or injuries to persons or damage to property which may arise out of or in any way be connected with the business.

5.54.060 Public Property Use Fee.

For the privilege of using public property for a commercial enterprise, an annual public property use fee shall be paid in advance, in the sum of fifty dollars (\$50.00) per vehicle, wagon, cart or location.

5.54.070 Business License Tax.

For the business of conducting or carrying on a street vendor or sidewalk vendor operation, the license tax shall be based upon average gross receipts as specified in Section 5.08.020.

5.54.080 Designated Location—Sidewalk Vendors.

A. A sidewalk vendor operation shall not be conducted in such a manner as to obstruct the free passage of any sidewalk nor shall it obstruct the free passage into or from any business, office or other establishment.

B. Public safety shall be the principal factor considered when determining allowable locations. In addition, a designated location shall not be:

1. Within ten (10) feet of a perpendicular line drawn from the curb to a doorway or entry opening of a building;
2. Within twenty (20) feet of any driveway;
3. Within twenty (20) feet of any crosswalk;
4. Within twenty (20) feet of the intersection of property lines of property at a street corner;
5. Within twenty (20) feet of an alley approach;
6. So that fire hydrants, fire department inlet connections or fire protection system control valves, and fire department access lanes are obstructed;
7. Within any residentially zoned district (unless within a park), if they are stationary, however, roaming sidewalk vendors are permitted.

C. No wagon or cart shall remain in its designated location overnight.

5.54.090 Stopping and Parking—Street Vendors.

A. Street vendors may use any street or alley in the City so long as they stop or park only next to the curb in a permitted parking space for a period of time not to exceed sixty (60) minutes at any one place.

B. Notwithstanding subsection A of this Section, street vendors shall not stop or park adjacent to any school between the hours of eight a.m. and four p.m. on any school day; or adjacent to any church on Sunday prior to twelve noon; or adjacent to any hospital; or adjacent to any park during the time of operation of any concessionaire under contract with the City.

5.54.100 Hours of Operation.

Street vendors and sidewalk vendors shall only operate between the hours of ten a.m. and eight p.m. daily in residential zones.

5.54.110 Shouting Wares.

Sidewalk vendors shall not shout or call out their wares, nor ring bells, play music or produce any forms of electronic or mechanical sounds to attract customers.

5.54.120 Sidewalk Vendor Carts.

Sidewalk vendor carts shall not be wider than five (5) feet nor longer than ten (10) feet. Any power used shall be contained wholly within the cart. A trash receptacle shall be provided and the vendor shall keep the area around the cart free of all garbage, litter and trash.

5.54.130 Temporary Relocation.

The City reserves the right to temporarily relocate or modify a designated location of a sidewalk vendor to the extent

necessary for any City-sponsored event or for any health and safety reasons.

5.54.140 Exemptions.

Except for Sections 5.54.050 and 5.54.080(A), this Chapter shall not apply to the following:

- A. Persons who have a fixed place of business on private property who conduct a sale on public property not more than six days per year.
- B. Persons who have obtained an exclusive use permit for a park or portion thereof pursuant to Chapter 14.08 of this Code.
- C. Nonprofit, charitable organizations which conduct a sale on public property not more than six (6) days per year.
- D. Persons who have concession agreements with the City.
- E. Persons who conduct a sale on public property at an event that is sponsored by the City.
- F. Organizations conducting sales on public property for the purpose of raising funds to be donated to the City.

5.54.150 Revocation of Permit.

- A. Violation of any provision of this Chapter, or of any federal, state, county or local health regulation shall be grounds for revocation of the permit upon the fourth violation or subsequent violation. Also, a permit may be revoked if not used during a period of sixty (60) consecutive days. In addition, any conduct of a street vendor or sidewalk vendor which is a threat to public health and safety shall be grounds for immediate revocation of the permit.
- B. Notice of a revocation hearing before the City Manager shall be given to the street vendor or sidewalk vendor by mail

at least five (5) days before the date of the hearing. At the hearing, the street vendor or sidewalk vendor may show cause why such permit should not be revoked. The City Manager shall mail her/his determination on the revocation to the street vendor or sidewalk vendor within five (5) days after the hearing.

5.54.160 Appeal.

Any decision by the City Manager to issue, revoke or deny a permit may be appealed to the City Council by filing a written appeal with the City Manager within ten (10) days of the mailing of the City Manager's decision. The City Council shall hear the appeal at the next regularly scheduled meeting provided that the appeal is received at least seven (7) days before the meeting date. The City Council's decision shall be final.”

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, 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 portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

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The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2021, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2021, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**

ABSTAIN: **Council Members:**

ABSENT: **Council Members:**

APPROVED:

Mayor

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Kimberly Madayag 7/1/21
City Attorney Date