

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	<u>X</u>
CM	<u>X</u>
CA	—

DATE: MAY 7, 2019

TO: CITY COUNCIL

FROM: MARK DENNY, CITY MANAGER
KELLY REENDERS, ECONOMIC DEVELOPMENT MANAGER

SUBJECT: SECOND READINGS OF SIDEWALK AND STREET VENDING ORDINANCES, AND PUBLIC HEARING

RECOMMENDED ACTION:

That the City Council take the following actions:

- 1) Hold a second reading of an ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA ADDING CHAPTER 5.03 TO THE DANA POINT MUNICIPAL CODE; and
- 2) Hold a second reading of the amendments to Dana Point Municipal Code Title 5.02 Regulation of Street Vendors Activities; and
- 3) Conduct a Public Hearing; and adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ESTABLISHING AN APPLICATION FEE FOR SIDEWALK VENDING

BACKGROUND:

On April 2, 2019 the City Council adopted an ordinance establishing Dana Point Municipal Code Title 5.03, to address sidewalk vending consistent with recently adopted State legislation. The attached resolution establishes a fee to process a sidewalk vending permit.

The public hearing notice was published on April 19, 2019 in the Dana Point Times.

DISCUSSION:

In 2017, the State Legislature passed, and the Governor signed, the Safe Sidewalk Vending Act (SB 946). SB 946 prohibits California cities from banning stationary or roaming vendors from operating on public sidewalks or other public walkways, including any walkways within public parks. SB 946 also prohibits cities from regulating sidewalk vendors unless cities establish a permitting system that is consistent with the provisions of SB 946. Furthermore, SB 946 requires that any restrictions placed on sidewalk/walkway vendors be directly related to objective health, safety or welfare concerns. SB 946 went into effect on January 1, 2019.

Working with the City Attorney's Office, staff prepared an ordinance addressing sidewalk vending in public right-of-way and presented it to City Council on April 2, 2019. The ordinance established new procedures and regulations to allow vendors on sidewalks and public walkways consistent with SB 946. The ordinance contained findings that detail the objective health, safety or welfare concerns that prompted the regulations. The ordinance also contains regulations for both stationary sidewalk vendors and roaming sidewalk vendors.

The adoption of A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING AN ESTABLISHING AN APPLICATION FEE FOR SIDEWALK VENDING will cover administrative costs associated with the processing and issuance of a permit, as well as, enforcement of the permit. The fee is \$150 and the City will require as part of the application process, among other pertinent information, a California seller's permit (for tax purposes), and a County Health Department permit (if required).

Clarification to Municipal Code Vending Regulations for Motorized Vehicles.

Chapter 5.02 of the City's Municipal Code establishes the regulations for motorized vendors on City streets such as food trucks, ice cream trucks, etc. The ordinance amendments adopted on April 2nd more closely align with the ordinance addressing sidewalk vending. A similar application fee has already established for motorized street vending.

NOTIFICATION AND FOLLOW-UP:

Chamber of Commerce

FISCAL IMPACT:

The nonrefundable permit fee will cover the cost of staff's time to process, issue and enforce a Sidewalk Vending Permit application. There is expected to be minimal fiscal impact associated with the recommended action.

ALTERNATIVE ACTIONS:

Other City Council directed actions.

ACTION DOCUMENTS:

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A. [An Ordinance of the City Council of the City of Dana point, California, adding Chapter 5.03 to the Dana Point Municipal Code.....4](#)

B. [Redlined version of the Dana Point Street Vending Chapter 5:02.....21](#)

C. [Resolution of the City Council of the City of Dana Point Establishing an Application Fee for Sidewalk Vending.....31](#)

ACTION DOCUMENT A: An Ordinance of the City Council of the City of Dana Point, California, adding Chapter 5.03 to the Dana Point Municipal Code

ORDINANCE NO. 19-XX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
DANA POINT, CALIFORNIA, ADDING CHAPTER 5.03 TO
THE DANA POINT MUNICIPAL CODE**

WHEREAS, on September 17, 2018, California Governor Edmund Gerald Brown signed Senate Bill 946 ("SB 946") into law, which adds Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the California Government Code to regulate sidewalk vendors throughout the state, including within the City of Dana Point;

WHEREAS, SB 946 takes effect January 1, 2019, and limits the authority of cities and counties in the state to regulate sidewalk vendors, except as otherwise specifically and expressly provided;

WHEREAS, existing provisions of the Dana Point Municipal Code prohibit or limit the activities of sidewalk vendors in a manner that may be in conflict with the provisions of SB 946;

WHEREAS, the City Council adopts this Ordinance in accordance with the authority granted by SB 946;

WHEREAS, the City Council declares that the regulations enacted by this Ordinance are intended to promote and protect the health, safety and welfare of the City's residents, businesses, and visitors and are in furtherance of the City's police powers;

WHEREAS, the City Council further declares that the provisions of this Ordinance are intended to regulate the time, place, and manner of sidewalk vending directly relating to public health, safety, and welfare objectives and concerns;

WHEREAS, the City Council further declares that the regulations enacted by this Ordinance, including, but not limited to those governing minimum sidewalk widths, sidewalk vending receptacle sizes, distance requirements, and food and merchandise storage, are intended and necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards;

WHEREAS, the City Council further declares that the regulations enacted by this Ordinance are intended and necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities;

WHEREAS, the City Council further declares that the regulations enacted by this Ordinance are intended and necessary to protect the natural resources and scenic and natural character of the City's parks and to prevent an undue concentration of commercial

activity that unreasonably interferes with the scenic and natural character of City parks;
and

WHEREAS, the City Council further declares that the regulations enacted by this Ordinance are intended and necessary to ensure public access to and enjoyment of locations that are popular tourist destinations with unusually high pedestrian, bicyclist, and vehicular traffic volumes, to protect the public from injury, and to minimize any interference and allow a clear exit path from commercial businesses to exit on to public sidewalks; and

WHEREAS, the City Council desires to retain the ability for local enforcement of sidewalk vendor regulations, including the imposition of fines for violations, to the extent consistent with State law;

NOW, THEREFORE, the City Council of the City of Dana Point ordains as follows:

SECTION 1: Chapter 5.03, entitled "Regulation of Sidewalk Vendors," is hereby added to the Dana Point Municipal Code to read in its entirety as follows:

Chapter 5.03

Regulation of Sidewalk Vendors

Sections:

5.03.010	Purpose
5.03.020	Definitions
5.03.030	Permit required
5.03.040	Issuance of permit
5.03.050	Operating conditions
5.03.060	Prohibited activities and locations
5.03.070	Penalties
5.03.080	Appeals
5.03.010	Purpose

(a) The purpose of this chapter is to establish a permitting and regulatory program for sidewalk vendors that complies with Senate Bill 946 (Chapter 459, Statutes 2018). The provisions of this chapter allow the City to encourage small business activities by removing total prohibitions on portable food stands and certain forms of solicitation while still permitting regulation and enforcement of unpermitted sidewalk vending activities to protect the public's health, safety and welfare.

(b) The City Council hereby finds that to promote the public's health, safety and welfare, restrictions on sidewalk vending are necessary to:

1. Ensure no unreasonable interference with the flow of 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; and

2. Provide reasonable access for the use and maintenance of sidewalks, pathways, poles, posts, traffic signs or signals, hydrants, water valves, manholes, storm drains, catch basins, firefighting apparatus, mailboxes or other utilities or appurtenances, as well as access to locations used for public transportation services; and

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

4. Ensure sidewalk vending activities occur only in locations where such activities would not restrict sidewalk and pathway access and enjoyment to all users, particularly those with disabilities.

(c) *This Chapter shall not apply to the following:*

1. The sale of agriculture products on the site where the product is grown;

2. Vending from food trucks and other motorized vehicles on public streets or alleys in accordance with Chapter 5.02 of this Code; or,

3. Vendors under contract for City-sponsored and/or City-approved special events including, but not limited to, a Certified Farmers' Market, Swap Meet, street fairs, parades, festivals and outdoor concerts.

5.03.020 Definitions

As used in this chapter, the following terms and phrases shall have the meaning ascribed to them in this part, unless the context in which they are used clearly requires otherwise. If a term or phrase is not defined in this part, or elsewhere in this code, the most common dictionary definition is presumed to be correct.

(a) *“Alcohol” and “alcoholic beverage” shall have the same meaning as defined in Section 13.04.020 of this code, or any successor section.*

(b) *“Cannabis” means the substances defined in Section 5.40.010 of this code, or any successor section.*

(c) *“Certified farmers’ market” means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter, or any successor chapter.*

(d) *“Curb face” means the vertical or sloping surface on the roadway side of the curb.*

(e) *“Emergency vehicle access” means the roadway path or other surface that provides police or fire safety vehicular access from the dispatched point of origin to a facility, building, parcel, park or portion thereof. Emergency vehicle access includes, but is not limited to, fire lanes, public and private streets, parking lot lanes, access roadways, and walkways.*

(f) *“Food” means any item provided in Health and Safety Code Section 113781, or any successor section.*

(g) *“Hearing officer” means an impartial individual designated by the City Manager to determine appeals pursuant to and in accordance with Section 5.03.080.*

(h) *“Heating element” means any device used to create heat for food preparation.*

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

(k) *“Pathway” means a paved path or walkway for pedestrian travel, other than a sidewalk.*

(l) *“Person” means and includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, business or common law trusts, societies, and individuals transacting and carrying on any business in the City.*

(m) *“Pocket park” means any park located in residential neighborhoods smaller than or equal to 30,000 square feet. These parks are situated adjacent to individual private residences.*

(n) *“Public property” means all property owned or controlled by the City, including, but not limited to, alleys, parks, pathways, streets, parking lots, sidewalks, and walking trails.*

(o) *“Residential” means any area zoned exclusively as residential in Title 9 of this code, including without limitation RSF 2, RSF 3, RSF 4, RSF 7, RSF 8, and RSF 12 zoning districts and specific plan areas.*

(p) *“Roaming sidewalk vendor” means a sidewalk vendor who moves from place-to-place and stops only to complete a transaction.*

(q) *“Sexually-oriented material” means the material defined in section 5.32.110(l) of this Code, or any successor section.*

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

(s) *“Sidewalk vending receptacle” means a pushcart, stand, display, wagon, showcase, rack, or non-motorized conveyance used for sidewalk vending activities. “Sidewalk vending receptacle” shall not include pedal driven carts.*

(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.*

(u) *“Sidewalk vendor activities” or “sidewalk vending” or “sidewalk vending activities” mean actions that qualify a person as a sidewalk vendor or actions done in anticipation of becoming a sidewalk vendor such as, but not limited to, installation, placement, or maintenance of any sidewalk vendor receptacles.*

(v) *“Special event” means any temporary permitted event approved by the City, including those permitted in accordance with Section 9.39.070.*

(w) *“Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.*

(x) *“Street” means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.*

(y) *“Swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that Chapter, or any successor Chapter.*

(z) *“Tobacco” shall mean any preparation of the nicotine-rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body.*

(aa) *“Tobacco paraphernalia” shall mean any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in California Health and Safety Code Section 11054 et seq. Items or devices classified as tobacco paraphernalia include but are not limited to the following: pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.*

(bb) *“Tobacco product” shall mean any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the*

product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means.

5.03.030 Permit required

(a) Permit Required. No person, either for himself/herself or any other person, shall engage in any sidewalk vendor activities within the City without first applying for and receiving a permit from the City Manager, or his or her designee, in accordance with this Chapter.

(b) Application. A written application for a sidewalk vendor permit shall be filed with the City Manager, or his or her designee, on a form provided by the City and shall contain the following information:

1. The name, address, and telephone number of the person applying to become a sidewalk vendor;
2. If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal;
3. The California driver's license or identification number, individual taxpayer identification number, or municipal identification number (which shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or comply with a state law or state or federal court order);
4. 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;
5. The name, address, and telephone number of all persons that will be employed as roaming sidewalk vendors or at a sidewalk vending receptacle;
6. The number of sidewalk vending receptacles the sidewalk vendor will operate within the City under the permit;
7. Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor;
8. The day(s) and hours of operation the stationary sidewalk vendor intends to operate at such location(s);
9. The location(s) in the City where the stationary sidewalk vendor intends to operate;
10. The dimensions of the sidewalk vendor's sidewalk vending receptacle(s), including a picture of each sidewalk vending receptacle operating under the permit;

11. If the sidewalk vendor proposes to be a stationary sidewalk vendor, a description or site plan map of the proposed location(s) where vending will take place, showing that the stationary sidewalk vending location maintains a minimum of thirty-six inches (36") of accessible route area, in compliance with the Americans with Disabilities Act;
12. Whether the sidewalk vendor will be selling food, merchandise, or both;
13. If the sidewalk vendor is selling food, a description of the type of food to be sold, whether such foods are prepared on site, and whether the vendor requires a heating element to prepare the food;
14. If the vendor is selling merchandise, a description of the merchandise to be sold;
15. A copy of the health permit required for any sidewalk vendors selling food, as required by Chapter 6.30.012 of this Code, or any successor chapter;
16. Proof of his or her possession of a valid California Department of Tax and Fee Administration seller's permit, which shall be maintained during the pendency of the sidewalk vendor's permit;
17. An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, state, and federal laws;
18. A certification that, to his or her knowledge and belief, the information contained within the application is true and correct;
19. 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, attorney's 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;
20. An acknowledgement that the sidewalk vendor's use of public property is at their 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 his or her own risk;

21. An acknowledgment by the sidewalk vendor that he or she will obtain and at all times during the duration of the permit, maintain any insurance of such types and in such amounts as required by the City's risk manager, and

22. An acknowledgment that at least four feet in width shall be maintained outside the vending receptacle and any customers acquiring food or merchandise.

23. An acknowledgment that the vendor will relocate if any public agency or emergency personnel need to access facilities/appurtenances in the area where the vendor is operating when notified.

24. Any other relevant information required by the City Manager.

(c) Application and Permit Fees. Each application for a sidewalk vendor permit shall be accompanied by an application fee as established by resolution of the City Council. The application and permit is only applicable to the individual(s) named on the application. If said permit is approved, it shall not be necessary for the permittee to obtain a City business license to carry on the activities authorized by said permit, unless such permittee maintains a permanent place of business within the City.

5.03.040 Issuance of permit

(a) Within thirty (30) calendar days of receiving a complete application determined at the sole discretion of the City Manager or designee, the City Manager 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, completed all community service, 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 same calendar year;
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 has adequate insurance to protect the City from liability associated with the sidewalk vendor's activities, including the naming of the City as an additional insured, as determined by the City's risk manager; and
13. The vendor has satisfactorily provided all information requested by the City Manager to consider the vendor's application.

(b) A sidewalk vendor permit is non-transferable. Any change in ownership or operation of a sidewalk vendor or sidewalk vending receptacle requires a new permit under this chapter.

(c) All permits issued under this chapter, expire one year from the date they were issued.

5.03.050 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. Sidewalk vending receptacles shall not be stored on public property and shall be removed when not in active use by a vendor.*
- (d) *All sidewalk vendors shall allow a City police officer, firefighter, life safety services officer, or code enforcement officer, at any time, to inspect their sidewalk vending receptacle for compliance with the size requirements of this chapter and to ensure the safe operation of any heating elements used to prepare food.*
- (e) *Sidewalk vending receptacles shall not exceed a total height of three (3) feet, a total width of three (3) feet, and a total length of three (3) feet.*
- (f) *No sidewalk vending receptacle shall be motorized or pedal-driven.*
- (g) *If a sidewalk vending receptacle requires more than one (1) person to conduct the sidewalk vending activity, all sidewalk vendors associated with the sidewalk vending receptacle shall be within five (5) feet of the sidewalk vending receptacle when conducting sidewalk vending activities.*
- (h) *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.*
- (i) *Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation.*
- (j) *Sidewalk vendors shall maintain the vending location in a clean, orderly, and sanitary condition.*
- (k) *Sidewalk vendors shall maintain a minimum four (4) foot clear accessible path free from obstructions, including sidewalk vending receptacles and customer queuing area.*
- (l) *Sidewalk vendors shall comply with the noise standards provided in Chapter 11.10 of this code, and any successor chapters.*
- (m) *Sidewalk vendors shall not approach persons to sell food or merchandise and shall not interfere in any way with anyone engaged in an activity to sell food or merchandise.*
- (n) *Sidewalk vendors shall not vend to or otherwise conduct transactions with persons in moving vehicles or vehicles illegally parked or stopped.*
- (o) *Sidewalk vendors shall immediately clean up any food, grease or other fluid or item related to sidewalk vending activities that falls on public property.*

5.30.60 Prohibited activities and locations

(a) Sidewalk vendors shall comply with all operating conditions, including those conditions set forth in Section 5.30.050.

(b) All sidewalk vendors, regardless of whether a roaming sidewalk vendor or stationary sidewalk vendor, are prohibited from conducting sidewalk vending activities between the hours of 10:00 p.m. and 7:00 a.m. daily. In residential areas, all stationary sidewalk vending is prohibited. In residential areas, roaming sidewalk vending activity is prohibited between the hours of 6:00 p.m. or sunset, whichever is earlier, and 9:00 a.m. of the following day, Monday through Saturday, inclusive, and all day on Sundays and federal holidays.

- (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 sexually-oriented material, tobacco, tobacco products or paraphernalia, cannabis, or alcohol;
 4. Using an open flame on or within any sidewalk vending receptacle;
 5. Using sound amplification equipment, music or live entertainment in conjunction with any sidewalk vending activity, including but not limited to the use of bells, whistles and horns or bright/flashing lights;
 6. Using free standing signs in conjunction with any sidewalk vending activities;
 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 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 or merchandise for sale;
 9. Blocking or impeding the path of the person(s) being offered food or merchandise to purchase;
 10. Making any statements, 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; and

11. Touching the person(s) being offered to purchase food or merchandise without that person(s)' consent.

(d) Sidewalk vendors shall not engage in sidewalk vending activities at the following locations:

1. Within twelve (24) inches of any curb face on all roads;
2. Within fifteen (15) feet of any entrance or exit to a building, structure or facility;
3. On any designated emergency vehicle access way;
4. Any public property that does not meet the definition of a sidewalk or pathway including without limitation any alley, park, street, open space trail, roadway or parking lot;
5. Within 200 feet of an area designated for a temporary special permit issued by the City, during the limited duration of the temporary special permit. If the City provides any notice, business interruption mitigation, or other rights to affected businesses or property owners under the City's temporary special permit, such notice will also be provided to any sidewalk vendors specifically permitted to operate in the area, if applicable;
6. On any private property without the express written consent of the owner or lessee of the property;
7. Within fifty (50) feet of another sidewalk vendor;
8. Within two hundred (200) feet of a school, a place of worship, or a child day-care facility;
9. Within two hundred (200) feet of a permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet;
10. On sidewalks or pathways with a paved dimension less than ten (10) feet in width;
11. Within twenty-five (25) feet of a:
 - (a) Fire hydrant;
 - (b) Curb which has been designated as yellow or red zone, or a bus zone;
 - (c) Automated teller machine;
 - (d) Driveway, alley, or street corner; crosswalk or utility box

(e) Trash or recycling receptacles, bike racks, benches, bus/trolley stops or similar public use items;

(f) Public art objects, items, and displays;

(g) Storm drain catch basin;

(h) Handicapped parking spaces or access ramps; and,

(i) Other public utilities.

12. In a location that would violate provisions of this code relating to visibility requirements for streets, alleys, driveways, and intersections;

13. In a location that would block access to play equipment, playing fields or park amenities.

14. For stationary sidewalk vendors, at any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire;

15. In pocket parks located in residential areas. These parks are small by design and any vending or commercial activity in them prevents the public from enjoying the natural resources and recreational opportunities in the pocket parks. A prohibition on sidewalk (and all other) vending in these pocket parks will prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park. These parks are situated adjacent to individual residences, and sidewalk vending activity will result in increased traffic, noise, and crowding, resulting in health, welfare, and safety issues;

16. In Memorial Park. Such restriction is necessary to ensure the public's use and enjoyment of the natural resources and recreational activities provided by this historical park. Visitors use this park as an escape from commercial activity, and sidewalk vending activities will cause congestion and commercial activity in direct contravention of the park's purpose. This restriction is necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of Memorial Park;

17. On the Pacific Coast Highway Pedestrian Bridge. Such restriction is necessary to ensure the public's safe use and enjoyment of the bridge. The public use the bridge for safe passage over PCH and sidewalk vending activities will cause congestion and commercial activity in direct contravention with its purpose. This restriction prevents commercial activity that unreasonably interfere with its use;

18. On any sidewalk with a gradient in excess of ten percent (10%);

19. Within two hundred (200) feet of any public safety facility, including without limitation police stations, fire stations, and lifeguard towers;

20. Within twenty-four (24) inches of a parallel parking space, measured from curb face or edge of pavement;

21. On any sidewalk where vending equipment and queuing patrons would reduce clearance to less than four (4) feet;

22. On any sidewalk where vending equipment and queuing patrons would restrict access requirements under the Americans with Disabilities Act; and,

23. On any sidewalk where vending equipment and queuing patrons would jeopardize the fire or life safety of any person.

(e) 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, trashcans, traffic signs, utility boxes, traffic barriers, or any other public utilities.

5.30.070 Penalties

(a) Violations of this chapter shall not be prosecuted as infractions or misdemeanors and shall only be punished by the following administrative fine and rescission provisions:

(b) Any violation of this chapter may be punished by:

1. An administrative fine not exceeding one hundred dollars (\$100) for a first violation;

2. An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year of the first violation; and

3. An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year of the first violation.

(c) If a sidewalk vendor violates any portion of this chapter and cannot present the citing officer with a proof of a valid permit, the sidewalk vendor may be punished by:

1. An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation;

2. An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year of the first violation; and

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

(d) Upon proof of a valid permit issued by the City, the administrative fines set forth in subsection C shall be reduced to the administrative fines set forth in subsection B, or any successor sections.

(e) The City Manager, of his or her designee, may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations, or for fraud or misrepresentation in the application for the permit.

5.30.080 Appeals

(a) Decisions to deny an application for a permit or to impose administrative fines may be appealed by any interested person. Appeals shall be heard and determined by the hearing officer.

(b) Appeals shall be initiated in writing within fifteen (15) calendar days of the decision or imposition of administrative fine. Notwithstanding any other provision of law, a person appealing an administrative fine shall pay the administrative fine as a prerequisite to filing an appeal.

(c) Appeals of decisions or administrative fines shall be made in writing to the hearing officer on forms provided by the City. The appeal shall state the facts and basis for the appeal.

(d) Appeals of a decision to deny an application for a permit shall be accompanied by a fee as established by resolution of the City Council,

(e) Decisions regarding administrative fines that are appealed shall not become effective until the appeal is resolved.

(f) The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) calendar days prior to the date of the hearing. The hearing shall be set for a date that is not less than fifteen (15) calendar days from the date that a completed request for administrative hearing is filed in accordance with the above provisions.

(g) No hearing shall be held unless and until the fine or penalty has been deposited with the City Clerk or an advance deposit hardship waiver has been issued.

(h) The hearing officer shall give notice in writing to the appellant of the time and location of the appeal hearing. At the hearing, the hearing officer shall review the record of the decision or administrative fine and hear testimony of the appellant, if any, the applicant and any other interested party. The appeal shall be reviewed and determined on a de novo basis.

1. If an administrative fine is the subject of an appeal, the hearing officer shall take into consideration the person's ability to pay the fine. The hearing officer 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. The person may request an ability-to-pay determination at or before the hearing or while the administrative fine remains unpaid.

2. If the person meets the criteria described in subdivision (a) or (b) of Government Code Section 68632, or any successor section, the hearing officer shall accept, in full satisfaction, twenty percent (20%) of the administrative fine imposed pursuant to this chapter.

3. 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.

(i) After the hearing, the hearing officer shall affirm, modify or reverse the original decision or administrative fine. When a decision or administrative fine is modified or reversed, the hearing officer shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within thirty (30) calendar days of the close of the hearing. The hearing officer shall mail notice of a decision to the appellant. Such notice shall be mailed within five (5) working days after the date of the decision to the appellant. The decision of the hearing officer shall be final. If the person contesting an administrative citation prevails in a challenge to the citation, the City shall within thirty (30) calendar days refund the full amount of the fine or penalty deposited.

The foregoing Ordinance was approved and adopted at a meeting of the City Council held on this _____ day of _____, 2019.

JOSEPH L. MULLER, Mayor
City of Dana Point, California

ATTEST:

KATHY WARD, City Clerk
City of Dana Point, California

APPROVED AS TO FORM:

City Attorney
City of Dana Point, California

STATE OF CALIFORNIA)
 COUNTY OF ORANGE) ss.
 CITY OF DANA POINT)

I, Kathy M. Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. 18-XX was duly introduced at a regular meeting of the City Council on the 17th day of July, 2018, and was duly adopted and passed at a regular meeting of the City Council on the ___ day of _____, 2018, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

KATHY M. WARD, CITY CLERK

ACTION DOCUMENT B: Redlined version of the Dana Point Street Vending Chapter 5:02

Chapter 5.02 REGULATION OF MOTORIZED STREET VENDING ACTIVITIES

Note

* Prior ordinance history: Ord. 91-15.

5.02.010 Purpose

(a) ~~(a)~~—The purpose of this Chapter is to establish a permitting and regulatory program for street ~~venders~~-vendors. The provisions of this chapter allow the City to encourage small business activities while still permitting regulation and enforcement of unpermitted ~~sidewalk~~street vending activities to protect the public's health, safety and welfare.

(b) This Chapter shall not apply to sidewalk ~~street venders~~-asvenders as defined and regulated by Chapter 5. ~~XX03~~ of this Code.

5.02.0210 Definitions.

—For the purposes of this Chapter, unless otherwise apparent from the context, certain words and phrases used in this Chapter are defined as follows:

(a) "Alcohol" and "alcoholic beverage" shall have the same meaning as defined in Section 13.04.020 of this code, or any successor section.

(b) "Cannabis" means the substances defined in Section 5.40.010 of this code, or any successor section.

(c) ——"Commercial vehicle" means a vehicle maintained for the transportation of persons for hire, compensation or profit, or designed, used or maintained primarily for the transportation of property. Passenger vehicles which are not used for the transportation of persons for hire, compensation or profit are not commercial vehicles.

(d) ——"Driver" means and includes every person who drives or is in actual charge and control of any vehicle ~~or nonmotorized device~~ from which vending takes place.

(e) ——"Goods or merchandise" includes items and products of every kind and description, including all food, produce and beverage items.

(f) ~~(f)~~—"Food" means any item provided in Health and Safety Code Section 113781, or any successor section.

(g) ~~(i)~~—"Merchandise" means any item(s) that can be sold and immediately obtained from a ~~sidewalk~~street vendor which is not considered food. Items for rent shall not be considered merchandise.

(h) ——"Highway" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.

(i) ——"Nonmotorized device" means any device moved exclusively by human power, including but not limited to, any pushcart, wagon, bicycle, tricycle or other wheeled container or conveyance.

—"Owner" means and includes every person having legal title to any vehicle or commercial vehicle ~~or nonmotorized device from which vending takes place.~~

(j) ~~_____~~ "Person" means any natural person, firm, partnership, association, corporation or other entity of any kind or nature.

(k) ~~_____~~ "Sexually-oriented material" means the material defined in section 5.32.110(l) of this Code, or any successor section.

(l) ~~(tt)~~ "Special event" means any temporary permitted event approved by the City, including those permitted in accordance with Section 9.39.070.

(m) ~~_____~~ "Street Vendor" means any person who engages in the act of vending from a vehicle or commercial vehicle

(n) ~~(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 and Professions Code, and any regulations adopted pursuant to that Chapter, or any successor Chapter.

(o) "Tobacco" shall mean any preparation of the nicotine-rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body.

(p) "Tobacco paraphernalia" shall mean any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in California Health and Safety Code Section 11054 et seq. Items or devices classified as tobacco paraphernalia include but are not limited to the following: pipes, punctured metal bowls, bong, water bong, electric pipes, e-cigarettes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.

(q) "Tobacco product" shall mean any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means.

(r) ~~(v)~~ "Vehicle" means a device by which any person or property may be motorized, propelled, moved or drawn upon a highway, ~~excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.~~

(s) ~~(w)~~ "Vend" or "vending" means the sale or offering for sale of any goods or merchandise to the public from a motorized vehicle ~~or~~ commercial vehicle ~~or nonmotorized device.~~

~~_____~~ "Vendor" means any person who engages in the act of vending from a vehicle ~~or~~ commercial vehicle ~~or nonmotorized device~~ or who drives or otherwise operates any such vehicle ~~or nonmotorized device for the purpose of vending therefrom.~~ (Amended by Ord. 96-09, 6/25/96)(KR11)

5.02.030 Permit Process.

(a) Permit Required. —It is unlawful for any person to engage in the act of vending from a motorized vehicle within the City unless that person first obtains a motorized vendor street vendor permit from the City and complies with all other provisions of this Chapter.

(b) Application. Any person desiring to vend within the City shall first submit an application for a vendor street vendor permit. A nonrefundable processing fee and annual vendor street vendor permit fee to be set by City Council resolution shall be submitted with the application. Such application shall include, but not be limited to, the following information:

1. Name, current mailing address, and phone number of the vendor street vendor; and

2. If the vendor street vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal; and

3. A description of the merchandise/goods to be offered for sale or exchange, and the days/hours of sales; and

4. A copy of the California seller's permit with the sales tax number issued by the California Department of Tax and Fee Administration to the vendor street vendor; which shall be maintained during the pendency of the sidewalk street vendor's permit; and

5. A copy of the vendor street vendor's social security card with the number; or a copy of the valid California Driver's license issued to the vendor street vendor; or a copy of the individual taxpayer identification number issued to the vendor street vendor.

6. The name, address and telephone number of all persons that will be employed as roaming sidewalk vendor street vendors or at a sidewalk vending receptacle.

~~(a) Name;~~

~~(b) Applicant's height, weight, color of eyes and hair;~~

~~(c) Written proof that the applicant is at least eighteen (18) years of age;~~

~~(d) A copy of the applicant's State of California driver's license or State of California-issued identification card;~~

~~(e) Current home address of applicant;~~

~~(f) The previous home addresses of applicant, if any, for the period of five (5) years immediately prior to date of application;~~

~~(g) Business, occupation and/or employment history of applicant for the five (5) years immediately preceding the date of application;~~

~~(h) Two (2) sets of fingerprints taken by the Orange County Sheriff's Department;~~

~~(i) Two (2) prints of a recent passport size photograph of applicant;~~

7. (j) The name and address of the owner of the vehicle, commercial vehicle or nonmotorized device to be used for vending;

~~8. (k) Any criminal convictions or offenses within the past ten (10) years;~~

~~9. (l) Any violations of this Chapter of this Code within the past year;~~

~~910.~~ ~~_____ (m)_____~~ The make, model and license plate number of all vehicles or commercial vehicles which will be used by the ~~vendor~~street vendor;

~~140.~~ ~~_____ (n)_____~~ A written description and photograph of all ~~non~~motorized devices which will be used by the ~~vendor~~street vendor;

~~121.~~ ~~Whether the vendor-street vendor will be selling food, merchandise, or both;~~

~~2132.~~ ~~If the vendor-street vendor is selling food, a description of the type of food to be sold, whether such foods are prepared on site, and whether the vendor-street vendor requires a heating element to prepare the food;~~

~~3142.~~ ~~If the vendor-street vendor is selling merchandise, a description of the merchandise to be sold;~~

~~4154.~~ ~~A copy of the health permit required for any street vendors ~~vendors~~ selling food, as required by Chapter 6.30.012 of this Code, or any successor chapter;~~

~~_____ (o)_____~~ A written description of the food, goods and/or merchandise proposed to be sold by the ~~vendor~~;

~~4165.~~ ~~An agreement by the vendor-street 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, attorney's 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-street vendor's ~~sidewalk~~street 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;~~

~~5176.~~ ~~An acknowledgment that the vendor-street vendor's use of public property is at their own risk, the City does not take any steps to ensure public property is safe or conducive to the vending activities, and the vendor-street vendor uses public property at his or her own risk;~~

~~6187.~~ ~~An acknowledgment by the vendor-street vendor that he or she will obtain and at all times during the duration of the permit, maintain any insurance of such types and in such amounts as required by the City's risk manager, and~~

~~8198.~~ ~~An acknowledgment that the vendor-street vendor will relocate if any public agency or emergency personnel need to access facilities/appurtenances in the area where the vendor-street vendor is operating when notified.~~

~~9129.~~ ~~Any other relevant information required by the City Manager. ~~_____ (p)_____~~ Such other information as may be reasonably required by the City;~~

~~_____ (q)_____~~ A statement in writing by the applicant that he or she certifies under penalty of perjury that the foregoing information contained in the application is true and correct, said statement being duly dated;

~~(r) Authorization for the City and its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application.~~

~~(c)~~ Upon receipt of a fully completed application for a ~~vendor-street vendor~~ permit and the applicable fees, the City shall review the information and conduct a criminal background check for each ~~vendor-street vendor~~ listed in the application. (Amended by Ord. 96-09, 6/25/96)

5.02.0340 Permit Approval.

~~(a)~~ The ~~vendor-street vendor~~ permit shall be approved, conditionally approved or denied by the City Manager or his or her designee based on whether the following criteria have been met:

- ~~1.~~ ~~(a)~~ Payment of all applicable fees;
- ~~2.~~ ~~(b)~~ Receipt and approval by the City Attorney of certificates of insurance of at least five hundred thousand dollars (\$500,000.00) combined single limit, certifying as to adequate liability insurance for the specific vending business which the ~~vendor-street vendor~~ will work for or owns, including coverage for all individuals, property and vehicles to be used in the vending. If a ~~vendor-street vendor~~ will not be using a vehicle or commercial vehicle to vend, then the certificate of insurance will not be required;
- ~~3.~~ ~~(c)~~ A finding that the ~~vendor-street vendor~~ has not been found guilty or pled no contest to any of the following within the past five (5) years: a crime of moral turpitude; a drug-related misdemeanor or felony, including but not limited to, the sale of a controlled substance; the sale, distribution or display of obscene matter; indecent exposure; selling or disposing of lottery tickets; gambling; bookmaking; or illegal use of food stamps;
- ~~4.~~ ~~(d)~~ A finding that, within the past year, the ~~vendor-street vendor~~ has not had a ~~vendor-street vendor~~ permit revoked or been found guilty of a violation of this Chapter;
- ~~5.~~ ~~(e)~~ Accurate completion of the application.

~~(b)~~ The decision of the City Manager may be appealed pursuant to Sections 2.04.100 through 2.04.130 of this Code.

~~(c)~~ If the ~~vendor-street vendor~~ permit application is approved, the City shall issue a ~~vendor-street vendor~~ permit and ~~vendor-street vendor~~ identification card to each vendor. The ~~vendor-street vendor~~ identification card shall include a photograph of the vendor. The ~~vendor-street vendor~~ permit and ~~vendor-street vendor~~ identification card will be valid for a period of one (1) year and must be renewed on or before the one (1) year anniversary of the issuance of the permit if the ~~vendor-street vendor~~ wishes to continue vending in the City.

~~(d)~~ Any person found to have misrepresented any information on the application will not be eligible to apply for a ~~vendor-street vendor~~ permit for a period of one (1) year. (Amended by Ord. 96-09, 6/25/96)

5.02.0450 ~~Vendor-Street~~ Vendor Regulations.

(a) ~~_____~~ (a) All ~~vendors~~~~street vendors~~~~vending~~~~vendors vending~~ fruits, vegetables, ice cream or other foodstuffs shall be in possession of a valid Orange County Health Inspection Sticker. If such foodstuffs are being vended from a vehicle or commercial vehicle, the sticker shall be affixed to the lower right side of the windshield of the vehicle or commercial vehicle and be clearly visible and legible. ~~If such foodstuffs are being vended from a nonmotorized vehicle, the sticker shall be clearly displayed in a prominent location.~~

(b) ~~_____~~ (b) While vending, each ~~vendor~~~~street vendor~~ who operates or vends from a vehicle or commercial vehicle shall have on his or her person a current valid State of California driver's license or State of California identification card which he or she shall make available for inspection by law enforcement officials upon request.

(c) ~~The street vendor permit shall be displayed conspicuously at all times on the vehicle or the street vendor's person. _____~~ (c) Each ~~vendor~~~~street vendor~~ shall wear his or her ~~vendor~~~~street vendor~~ identification card issued by the City in a visible position upon his or her person at all times while vending. ~~xxxxxx~~

(d) ~~_____~~ (d) Each ~~vendor~~~~street vendor~~ shall comply with all requirements of state law relating to the collection of applicable sales tax on any food, goods or merchandise sold within the City of Dana Point.

~~Prohibited within the immediate vicinity of an area designated for a temporary special permit issued by the City, during the limited duration of the temporary special permit. If the City provides any notice, business interruption mitigation, or other rights to affected businesses or property owners under the City's temporary special permit, such notice will also be provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. Vendors contracted for these events shall be exempt from the provisions in this chapter.~~

~~Prohibited on any private property without the express written consent of the owner or lessee of the property.~~

~~Sidewalk vendors shall not engage in sidewalk vending activities within two hundred (200) feet of a permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet.~~

~~Prohibits vending in parks or City properties that contain City-licensed concession stands or City concession agreements.~~

(e) ~~_____~~ (e) ~~Vendors~~~~Street vendors~~~~may~~~~vendors may~~ only vend between the hours of 7:00 a.m. and ~~7~~10:00 p.m. (Amended by Ord. 96-09, 6/25/96)

5.02.0560 Prohibited Conduct.

~~— (a) — It is unlawful for any person to vend from any nonmotorized device or operate any nonmotorized device for vending purposes while parked, stopped or standing upon any public street, highway, alley, sidewalk or parkway in the City.~~

(a) ~~— (b) —~~ It is unlawful for any person to vend from any vehicle or commercial vehicle unless the driver of such vehicle or commercial vehicle has brought such vehicle to a complete stop, turned off such vehicle or commercial vehicle, and lawfully parked adjacent to a curb.

~~(b) Such vehicle or commercial vehicle shall be deemed to not be lawfully parked for purposes of this Chapter if it is parked~~ Street vending is prohibited in any of the following locations:

1. ~~— (1) —~~ Within an intersection;
2. ~~— (2) —~~ On a crosswalk;
3. ~~— (3) —~~ Within an area designated as "no parking" by either signage or a curb painted red;
4. ~~— (4) —~~ Within fifteen (15) feet of the driveway entrance to a fire station; crosswalk or utility or traffic control box
5. ~~— (5) —~~ In front of a public or private driveway;
6. ~~— (6) —~~ On a sidewalk;
7. ~~— (7) —~~ Alongside or opposite any street or highway excavation or obstruction when stopping, standing or parking would obstruct traffic;
8. ~~— (8) —~~ On the roadway side of any vehicle stopped, parked or standing at the curb or edge of a highway;
9. ~~— (9) —~~ Alongside curb space designated for the loading and unloading of bus passengers;
10. ~~— (10) —~~ Upon a bridge;
11. ~~— (11) —~~ In front of that portion of a curb which has been cut down, lowered or constructed to provide wheelchair access and which has been designated as such by either signage or red paint on the curb.

It is prohibited to operate:

12. In any City park, or City properties that contain City licensed concession stands or City concession agreements.
13. Within the 200 feet of an area designated for a temporary special permit issued by the City, during the limited duration of the temporary special permit. If the City provides any notice, business interruption mitigation, or other rights to affected businesses or property owners under the City's temporary special permit, such notice will also be provided to any street vendors specifically permitted to operate in the area, if applicable. Street vendors contracted for these events shall be exempt from the provisions in this chapter.

14. Within two hundred (200) feet of a permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet.

15. On any private property without the express written consent of the owner or lessee of the property.

16. With the use sound amplification equipment, music or live entertainment in conjunction with any street vending activity, including but not limited to the use of bells, whistles and horns or bright/flashing lights;

17. With free standing signs in conjunction with any street vending activities.

~~(12.) Prohibits vending in any City parks or City properties that contain City licensed concession stands or City concession agreements.~~

~~13. Within the immediate vicinity of an area designated for a temporary special permit issued by the City, during the limited duration of the temporary special permit. If the City provides any notice, business interruption mitigation, or other rights to affected businesses or property owners under the City's temporary special permit, such notice will also be provided to any street vendors specifically permitted to operate in the area, if applicable. Street vendors contracted for these events shall be exempt from the provisions in this chapter.~~

~~14. On any private property without the express written consent of the owner or lessee of the property.~~

~~15. Within two hundred (200) feet of a permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet.~~

(c)13. (e) It is unlawful for any person to vend from a vehicle while parked, stopped or standing upon any public street, highway, alley, sidewalk or parkway perform street vending activities:

1. (1) Before the hour of 7:00 a.m. or after the hour of 7:10:00 p.m.;

2. (2) Within ~~two~~ five hundred (~~2500~~) feet of any school property;

3. (3) In any manner that impedes the flow of traffic;

4. (4) In any manner that impedes the flow of pedestrians on any sidewalk;

5. (5) Without clearly displaying the ~~vendor~~ street vendor identification card on the vehicle so that it is visible from the public right-of-way.

6. (d) It is unlawful to engage in vending w~~o~~ without first obtaining a ~~vendor~~ street vendor permit from the City.

~~(e)(d)19.~~ ~~It is unlawful for the street vendor to sell sexually-oriented material, tobacco, tobacco products or paraphernalia, cannabis, or alcohol; It is unlawful for a street vendor to sell sexually-oriented material, cannabis, or alcohol.~~

~~(e)20.~~ ~~(c)~~ It is unlawful for any ~~vendor-street vendor~~ or owner to drive or cause to be driven any vehicle or commercial vehicle used for vending which is in a defective, unsafe or unsanitary condition. Every vehicle or commercial vehicle used for vending shall be subject to inspection by any officer of the City at all times during its operation. (Amended by Ord. 96-09, 6/25/96)

5.02.0760 Street Vending on Private Property.

—No street vending shall be allowed on private property without:

(a) The express written consent of the owner or lessee of the property.

(b) First obtaining unless a separate permit is first obtained from the City and such vehicle, commercial vehicle or ~~non~~motorized device is otherwise being operated in compliance with this Chapter and any other applicable state or local laws, including the City's zoning regulations. (Amended by Ord. 96-09, 6/25/96)

5.02.0870 Remedies for Violation.

In addition to any other penalties of law, any ~~vendor-street vendor~~ found to be in violation of this Chapter or who has been convicted or pled no contest to any of the violations outlined in Section 5.02.030(c) shall be subject to the following:

(a) ~~(a)~~ Revocation of the current ~~vendor-street vendor~~ permit and ~~vendor-street vendor~~ identification card.

(b) ~~(b)~~ Requirement that the ~~vendor-street vendor~~ discontinue vending and vacate the area.

(c) ~~(c)~~ Should any ~~vendor-street vendor~~ fail to discontinue vending at the direction of any officer of the City, all property associated with the ~~vendor-street vendor~~'s operation shall be impounded at the ~~vendor-street vendor~~'s cost. In the event that property has been seized, said property will be held until all financial obligations related to impound costs and any other legally imposed fees, fines or costs have been met. (Amended by Ord. 96-09, 6/25/96)

5.02.0980 Appeal of Revocation of Vendor-Street Vendor Permit.

In the event of the revocation of a ~~vendor-street vendor~~ permit, the permittee shall have the right to appeal such revocation to the City Council pursuant to Sections 2.04.100 through 2.04.130 of this Code. In the event the revocation is upheld, the permittee shall not be eligible to apply for a new ~~vendor-street vendor~~ permit for a period of one (1) year from the date of revocation. (Amended by Ord. 96-09, 6/25/96)

5.02.1090 Violation—Penalty.

Any person or persons who shall violate the provisions of this Chapter shall be guilty of a misdemeanor and subject to punishment in accordance with Section 1.01.220 of this Code. Each and every day during any portion of which the provisions of this Chapter are violated shall constitute a separate offense and may be punished accordingly. (Amended by Ord. 96-09, 6/25/96)

ACTION DOCUMENT C: Resolution of the City Council of the City of Dana Point Establishing an Application Fee for Sidewalk Vending

RESOLUTION NO. 19-05-07-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING AND ESTABLISHING AN APPLICATION FEE FOR SIDEWALK VENDING.

WHEREAS, The City Council did, on the 7th day of May, 2019, hold a duly noticed public hearing prescribed by law to consider such requests, and,

WHEREAS, The City Council has adopted an ordinance establishing regulations and application procedures for sidewalk vending on the 2nd day of April, 2019.

WHEREAS, it is the desire of the City Council to set equitable service charges; and

WHEREAS, it is the desire of the City Council to permit sidewalk vending to promote the public health, safety, and welfare; and

WHEREAS, cities are authorized to charge fees which do not exceed the estimated reasonable cost of processing the application for which the fee is charged; and

WHEREAS, the application fee is to be established at \$150 per application; and

WHEREAS, the City Council finds and determines that the application fee is reasonable and reflects the cost of providing City services; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Dana Point as follows:

Establish a Sidewalk Vending Application Fee of \$150 per application.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Dana Point, California, held on this 7th day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOSEPH L. MULLER
MAYOR

ATTEST:

KATHY M. WARD
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, Kathy M. Ward, City Clerk of the City of Dana Point, California, do by certify that the foregoing is a true and correct copy of Resolution No. _____ adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 7th day of May, 2019, by the following vote:

AYES:

NOES:

ABSENT:

(SEAL)