

ORDINANCE NO. 19-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA RENUMBERING CHAPTER 5.20 (OUTDOOR VENDORS) AS CHAPTER 8.61 (OUTDOOR VENDING ON PRIVATE PROPERTY) AND MAKING RELATED AMENDMENTS, ADDING A NEW CHAPTER 8.60 PERTAINING TO OUTDOOR VENDING ON PUBLIC PROPERTY, AMENDING SECTION 12.04.060 PERTAINING TO VENDING IN CITY PARKS, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (LONG RANGE PLANNING PROJECT NO. LR18-1663)

WHEREAS, Senate Bill (“SB”) 946 was signed into law on September 17, 2018, and became effective January 1, 2019;

WHEREAS, SB 946 limits the authority of cities and counties to regulate outdoor vendors on public property, except in accordance with California Government Code Sections 51038 and 51039;

WHEREAS, the City of Temecula Municipal Code currently prohibits outdoor vendors within the public right-of-way and public parks, in conflict with SB 946;

WHEREAS, the City Council finds that the act of outdoor vending in areas of the public right-of-way creates the potential for increased safety hazards, such as, but not limited to, inhibiting the ability of disabled individuals and other pedestrians to follow a safe path of travel; interfering with the performance of police, firefighter, and emergency medical personnel services; encouraging pedestrians to cross mid-block or stand in roadways to purchase food; and creating obstacles and contributing to congestion for pedestrian, vehicle, and bicycle traffic;

WHEREAS, the City Council finds that restrictions on outdoor vendors are needed to accommodate vendors and their equipment, while also safe-guarding the flow of pedestrian movement on sidewalks and in the public right-of-way, safe-guarding the traveling public on City streets, and ensuring no interference with the performance of police, firefighter, and emergency medical personnel services;

WHEREAS, the City Council finds that the regulation of vendors engaged in the sale of food and food products will help to ensure that outdoor vendors obtain all necessary permits and comply with applicable sanitation, food preparation, and food handling laws, and thereby will protect the public health and safety against health problems such as food contamination, poor hygienic practices, and the threat of food poisoning;

WHEREAS, the City Council finds that regulations related to the collection and disposal of trash or other debris generated by outdoor vendors are necessary to ensure that such trash or debris is not left, thrown, discarded, or deposited on City streets, sidewalks, pathways, gutters, or storm drains, or upon public or private lots, so that the same might be or become a pollutant;

WHEREAS, the City Council finds that restrictions on outdoor vendors in public parks is necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities, and to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of these parks;

WHEREAS, the City Council finds that restrictions on outdoor vendors in residential areas and schools are necessary to ensure that such areas are protected from excessive traffic impacts to maintain circulation flow and without distractions while sustaining pedestrian safety during peak-time hours;

WHEREAS, the City Council finds that restrictions prohibiting stationary outdoor vendors from vending on unpaved or unimproved surfaces is necessary to protect the public health and safety as pollutants could contaminate the ground;

WHEREAS, the City Council finds that restrictions on outdoor vendors are necessary to safe-guard the flow of pedestrian, bicycle, and automobile movement along street intersections, driveway or drive apron, and transit stops with proper distance separation to safe-guard the traveling public on City streets, maintain American with Disabilities Act (ADA) accessibility standards, and ensuring no interference with the performance of police, firefighter, and emergency medical personal services;

WHEREAS, the City Council finds that restrictions regarding the hours of operations of outdoor vendors are necessary within residential neighborhoods to ensure that the vendors are not creating excess noise and a commercial type activities within a residential zone that can be detrimental to the general welfare of the community;

WHEREAS, the City Council finds that requiring proof of liability insurance for outdoor vendors as part of the permit requirement is essential to protect the public health and welfare and ensure that the City is protected from potential liability as a result of any injuries caused by the vending carts or operation of the vending carts;

WHEREAS, the City Council finds that restrictions prohibiting the sale of alcohol, cannabis, tobacco, adult-orientated materials, weapons, starter guns and fake knives is necessary to protect the public health, safety, and welfare;

WHEREAS, the City Council finds that restrictions regarding the appearance of the vending carts are necessary to ensure that the vendor carts are not detrimental to the general welfare of the community; and

WHEREAS, the City Council adopts this Ordinance under the authority provided in SB 946, and finds that the time, place, and manner regulations and requirements provided herein are directly related to the City's purpose of protecting of the health, safety, and welfare of its residents, businesses and visitors.

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

Section 1. Chapter 5.20 (Outdoor Vendors) of Title 5 (Business Licenses and Regulations) of the Temecula Municipal Code is hereby renumbered as Chapter 8.61 and renamed as “Outdoor Vending on Private Property”, and is hereby added to Title 8 (Health and Safety) of the Temecula Municipal Code.

Section 2. Section 8.61.030 (License and application.) of Chapter 8.61 (Outdoor Vending on Private Property) of Title 8 (Health and Safety) of the Temecula Municipal Code is hereby amended to add a new subsection C to read as follows:

“C. This Chapter shall not apply to outdoor vending on public property which is regulated pursuant to Chapter 8.60 of the Municipal Code.”

Section 3. Section 8.61.080 (Prohibited conduct and hours of operation.) of Chapter 8.61 (Outdoor Vending on Private Property) of Title 8 (Health and Safety) of the Temecula Municipal Code is hereby amended to amend subsection C to read as follows (with additions shown in underline and deletions shown in strikethrough):

“C. Store, park or leave any vending stand ~~within any public right of way or~~ on any undeveloped or otherwise vacant property, or store, park or leave any vending stand within any public right of way unless it is done in compliance with Chapter 8.60 of the Municipal Code;”

Section 4. The Temecula Municipal Code is hereby amended to add a new Chapter 8.60 to Title 8 (Health and Safety), which shall read as follows:

“Chapter 8.60 - Outdoor Vending on Public Property

Sections:

- 8.60.010 Definitions.**
- 8.60.020 Permit Required.**
- 8.60.030 Permit Application.**
- 8.60.040 Criteria for Approval or Denial of Permit.**
- 8.60.050 Permit Expiration and Renewal.**
- 8.60.060 Permit Rescission.**
- 8.60.070 Appeals.**
- 8.60.080 Permits Non-Transferrable.**
- 8.60.090 Operating Standards.**
- 8.60.100 Administrative Citations.**

8.60.010 Definitions.

The following words and phrases, whenever used in this chapter, shall mean as follows:

A. “Block” means the aggregate of private lots, passages, and common drives without the separation of another street or an area of land within a subdivision entirely bounded by streets, or bounded on part by streets and in part by the exterior boundary of the subdivision.

B. “Certified farmers’ market” means a location operated in accordance with Chapter 10.5 of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter.

C. “Director” means the City Manager, or his or her designee.

D. “Outdoor vendor” means a person who vends from a vending cart or from one’s person, upon a public sidewalk, pedestrian path, or other public right of way available to pedestrians. An outdoor vendor may be either a roaming vendor or a stationary vendor.

E. “Permit” means an outdoor vendor permit issued pursuant to this Chapter.

F. “Person” means one or more natural persons, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs, or organizations composed of two or more individuals (or the manager, lessee, agent, servant, officer, or employee of any of them), whether engaged in business, nonprofit, or any other activity.

G. “Roaming vendor” means a vendor who moves from place to place and stops only to complete a transaction.

H. “Stationary vendor” means a vendor who vends from a fixed location.

I. “Swap meet” means a location operated in accordance with Article 6 of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

J. “Temporary special permit” means a permit issued by the City for the temporary use of, or encroachment on, the sidewalk or any other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerns.

K. “Transit Stop” means a site containing a rail station or the intersection of two or more bus routes with a service interval of 15 minutes or less during the morning and afternoon peak commute periods.

L. “Vend” or “vending” means to sell, offer for sale, display for sale, or solicit offers to purchase, food, food products, beverages, goods, or merchandise.

M. “Vending cart” means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for vending, that is not a vehicle as defined in the California Vehicle Code.

8.60.020 Permit Required.

No person, either for themselves or any other person, shall conduct or engage in outdoor vending within the City without first obtaining an outdoor vending permit pursuant to this chapter.

8.60.030 Permit Application.

To apply for an outdoor vending permit, a person must file an application with the Director, accompanied by a nonrefundable processing fee in an amount established by resolution of the City Council. The application shall be in a form prescribed by the Director and shall contain, at a minimum, the following:

- A. The legal name and current address and telephone number of the applicant;
- B. If the applicant is an agent of an individual, company, partnership, corporation, or other entity, the name and business address of the principal;
- C. A description of the food or merchandise offered for sale;
- D. Whether the applicant intends to operate as a stationary vendor or a roaming vendor;
- E. A copy of a valid business license issued pursuant to Chapter 5.04 of the Temecula Municipal Code;
- F. A California seller's permit number pursuant to Section 6067 of the Revenue and Taxation Code;
- G. Certification by the applicant that the information contained in the application is true to his or her knowledge and belief;
- H. If an outdoor vendor of food or food products, certification to completion of a food handler course and proof of all required approvals from the Riverside County Department of Environmental Health;
- I. Proof of general liability insurance with minimum combined single limits coverage of one million dollars (\$1,000,000) and naming the city and Temecula Community Services District as "additional insureds" in a form approved by the City Manager;
- J. A plan of how the outdoor vendor will collect and dispose of trash and recycling;
- K. A diagram that identifies the dimensions of the vending cart (height, width, and depth);
- L. A colored photograph of the vending cart;
- M. A plan of how the outdoor vendor will properly display Department of Environmental Health permit and Business License on the cart;
- N. Identify the proposed hours of operation; and
- O. Any other reasonable information regarding the time, place, and manner of the proposed vending.

8.60.040 Criteria for Approval or Denial of Permit.

A. The Director shall approve the issuance of a permit unless he or she determines that:

1. Information contained in the application, or supplemental information requested from the applicant, is false in any material detail; or
2. The applicant has failed to provide a complete application, after having been notified of the requirement to produce additional information or documents; or
3. The applicant has failed to demonstrate an ability to conform to the operating standards set forth in Section 8.60.090; or
4. The applicant has failed to pay any previous administrative fines, or complete any community service associated with a previous violation of this chapter.

B. If the permit is denied, written notice of such denial and the reasons therefor shall be provided to the applicant.

C. Prior to issuance of a permit, if food will be served from the vending cart, the City shall have the right to inspect the cart for fire and safety issues to ensure that the public health and safety will not be injured by the operation of the vending cart.

8.60.050 Permit Expiration and Renewal.

A permit shall be valid for twelve (12) months from the date of issuance, 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 his or her active permit.

8.60.060 Permit Revocation

The Director may revoke a permit issued to an outdoor vendor for a fourth violation or subsequent violation of this Chapter. An outdoor vendor whose permit is revoked may apply for a new permit upon the expiration of the term of the revoked permit.

8.60.070 Appeals.

Any person aggrieved by the decision of the Director to issue, deny issuance, or rescind a permit may appeal the decision to the City Council pursuant to the provisions of Chapter 2.36 of the Code. The appeal shall be filed with the City Clerk within ten (10) days following the date of the Director's decision.

8.60.080 Permits Nontransferable.

No permit granted pursuant to this Chapter shall be transferable.

8.60.090 Operating Standards.

Outdoor vendors shall comply with the following operating standards:

A. No outdoor vendor shall vend in any of the locations listed below. Any distances identified below shall be measured from the property line.

1. Within fifty (50) feet of any street intersection;
2. Within fifteen (15) feet of any fire hydrant, fire call box, police call box, or other emergency facility;
3. Within twenty five (25) feet of any driveway or driveway apron;
4. Within fifty (50) feet of a transit stop;
5. Upon or within any roadway, median strip, or dividing section;
6. Upon an outdoor area that is unpaved or unimproved (i.e., is not made from concrete, asphalt, or similar material);
7. Within two hundred (200) feet of a permitted certified farmers' market, a swap meet, or an area designated for a temporary special permit. This prohibition shall be limited to the operating hours of the farmers' market or swap meet, or the limited duration of the temporary special permit.
8. Within two hundred (200) 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.
9. Within one hundred (100) feet of any public picnic area, playground area, or playground equipment.
10. Within two hundred (200) feet from the Civic Center building, Civic Quad and Town Square.
11. Outdoor vendors shall not be located at any signalized intersections or in any manner block traffic signal equipment and cabinets.

B. Stationary outdoor vendors are prohibited from operating in the following zoning districts: Hillside Residential District (HR), Rural Residential (RR), Very Low Density Residential (VL), Low Density Residential (L-1 and L-2), Low Medium Density Residential (LM), Medium Density Residential (M), High Density Residential (H), and Hillside Residential-Santa Margarita (HR-SM).

C. Stationary outdoor vendors shall not vend at any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire.

D. Stationary outdoor vendors shall not be located on utility boxes or in a manner that obstructs access to a utility box.

E. No outdoor vendor shall vend in a manner that blocks or obstructs the free movement of pedestrians or vehicles. Outdoor vendors must at all times provide a clearance of not less than four (4) feet on all outdoor or pedestrian areas so as to enable persons to freely pass while walking, running, or using mobility assistance devices.

F. Outdoor vending is permitted during the following time periods:

1. From dusk until dawn, in the following zoning districts: Hillside Residential District (HR), Rural Residential (RR), Very Low Density Residential (VL), Low Density Residential (L-1 and L-2), Low Medium Density Residential (LM), Medium Density Residential (M), High Density Residential (H), and Hillside Residential-Santa Margarita (HR-SM).
2. In nonresidential areas, the hours of operation shall be between 7:00 a.m. to 9:00 p.m. daily. In no event shall the limit on hours of operation be more restrictive than the hours of operation of other businesses or uses on the same block.
3. In City parks, outdoor vending shall be permitted during public park hours of operation.

G. Outdoor vendors shall provide a trash receptacle for customers and ensure proper disposal of customer trash. Prior to leaving any vending location, the outdoor vendor shall pick up, remove, and dispose of all trash generated by the vending operations or the outdoor vendor's customers within a fifteen (15) foot radius of the vending location.

1. A stationary outdoor vendor shall maintain a clearly designated trash receptacle in the immediate vicinity of the vending cart marked with a sign requesting use by patrons. The trash receptacle shall be large enough to accommodate customer litter without resort to use of existing trash receptacles located on any block for use by the general public. The outdoor vendor's trash receptacle may not be left on the public right-of-way upon leaving any vending location. The outdoor vendor shall not empty its trash receptacle into a City refuse container.
2. A roaming outdoor vendor shall maintain a trash receptacle attached to the vending cart marked with a sign requesting use by patrons. The trash receptacle shall be large enough to accommodate customer litter without resort to use of existing litter receptacles located on any block for use by the general public. The outdoor vendor shall not empty its litter receptacle into a City refuse container.

H. Outdoor vendors of food or food products shall possess and display in plain view on the vending cart a valid mobile food facility permit from Riverside County Department of Environmental Health.

I. Outdoor vendors shall possess at all times while vending a valid permit issued pursuant to this chapter, as well as any other permit or license required by the City and any other appropriate governmental agency. The permit shall be displayed in plain view on the vending cart.

J. Outdoor vendors shall comply with all applicable state and local laws, including without limitation state food preparation, handling, and labeling requirements; fire codes and regulations; noise standards; parking requirements; and the Americans with Disabilities Act of 1990 and other disability access standards (both state and federal).

K. Vending carts shall not be chained, fastened, or affixed at any time to any building or structure, fences and utilities, including, but not limited to lampposts, parking meters, traffic signals, fire hydrants, benches, bus shelters, trash cans, street signs, trees, or other objects within the public right-of-way. No vending cart shall become a permanent fixture on the vending site or be considered an improvement to real property.

L. Autonomous vending is prohibited.

M. Vending carts shall not be left unattended or stored on public property, within the public right-of-way, or on private property visible from the public right-of-way.

N. Outdoor vendors shall possess at all times while vending proof of liability insurance.

O. Outdoor vendors shall not sell any of the following prohibited items:

1. Alcohol;
2. Cannabis;
3. Tobacco products, vapes, e-cigarettes;
4. Adult orientated material;
5. Weapons of any kind;
6. Toy guns and toy weapons;
7. CO₂ powered, spring powered and air powered weapons;
8. Lethal weapons;
9. Non-lethal weapons; or
10. Starter guns and fake knives.

P. The use of amplified sound is prohibited.

Q. Outdoor vending carts shall be maintained in a clean and neat manner.

R. Vending carts that will be operated in the Old Town Specific Plan area shall not be substantially different in appearance from stationary vending carts that are permitted to operate in the Old Town Specific Plan area.

S. Outdoor vendors must ensure that food and merchandise are securely fastened to the vending cart in such a manner that the food or merchandise does not fall off or extend outside of the frame of the vending cart.

T. All signage and advertising related in any way to the outdoor vendor must be attached to the vending cart or the outdoor vendor's person, and shall not be flashing or animated.

8.60.100 Administrative Citations.

A. A violation of this chapter by an outdoor vendor who has a valid permit from the City is punishable only by an administrative citation pursuant to Chapter 1.21, in amounts not to exceed the following:

1. One hundred dollars (\$100) for a first violation.
2. Two hundred dollars (\$200) for a second violation within one year of the first violation.
3. Five hundred dollars (\$500) for each additional violation within one year of the first violation.

B. A person engaged in outdoor vending without a valid City outdoor vending permit is punishable by an administrative citation pursuant to Chapter 1.21 in amounts not to exceed the following, in lieu of the amounts set forth in paragraph A:

1. Two hundred fifty dollars (\$250) for a first violation.
2. Five hundred dollars (\$500) for a second violation within one year of the first violation.
3. One thousand dollars (\$1,000) for each additional violation within one year of the first violation.
4. Upon proof of a valid outdoor vending permit issued by the City, the administrative citations set forth in this paragraph shall be reduced to amounts set forth in paragraph A.

C. A violation of this Chapter shall not be punishable as an infraction or misdemeanor. No person alleged to have violated the provisions herein shall be subject to arrest except when otherwise permitted by law.

D. Failure to pay an administrative citation issued pursuant to this section shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized herein shall not be assessed.

E. When assessing administrative citations pursuant to this section, the hearing officer shall take into consideration the person's ability to pay the fine. The City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

F. If the person meets the criteria described in subdivision (a) or (b) of Government Code Section 68632, the City shall accept, in full satisfaction, twenty (20) percent of an administrative citation imposed pursuant to this chapter.

G. The hearing officer may allow a person to complete community service in lieu of paying the total administrative citation, may waive the administrative citation, or may offer an alternative disposition."

Section 5. Section 12.04.060 (Solicitation prohibited.) of Chapter 12.04 (Park and recreation area use regulations.) of Title 12 (Public services) of the Temecula Municipal Code is hereby amended to read as follows (with additions shown in underline and deletions shown in strikethrough):

"No person shall practice, carry on, conduct or solicit for any commercial occupation, business or profession in any city park, or sell or offer for sale any food, beverage, merchandise, article or anything whatsoever in any city park. This section shall not apply to any person acting pursuant to a contract with the city or the Temecula community services district, or under a permit granted by the commission or director, including any permit issued pursuant to Chapter 8.60."

Section 6. CEQA. The City Council finds and determines that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. Accordingly, this Ordinance is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b) (3) and 15378 of Division 6 of Title 14 of the California Code of Regulations.

Section 7. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any 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 passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 8. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption. The City Clerk is directed to certify to the enactment of this Ordinance and to cause this ordinance to be published and/or posted as required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula
this day of , 2019.

Michael S. Naggar, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 19- was duly introduced and placed upon its first reading at a meeting of the City Council of the City of Temecula on the 28th day of May, 2019, and that thereafter, said Ordinance was duly adopted by the City Council of the City of Temecula at a meeting thereof held on the day of , 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Randi Johl, City Clerk