

**CITY OF TEMECULA  
AGENDA REPORT**

**TO:** City Manager/City Council

**FROM:** Luke Watson, Director of Community Development

**DATE:** May 28, 2019

**SUBJECT:** Approve an Outdoor Vendor Ordinance Pertaining to Public and Private Property (Long Range Planning Project No. LR18-1663)

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**PREPARED BY:** Sara Toma, Assistant Planner

**RECOMMENDATION:** That the City Council introduce and read by title only an ordinance entitled:

**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)**

**SUMMARY OF**

**ORDINANCE:** Long Range Planning Project No. LR18-1663, in conformance with Senate Bill (“SB”) 946, the City is (1) adding a new Chapter 8.60 to regulate outdoor vending on public property, (2) renumbering Chapter 5.20 (Outdoor Vendors) as Chapter 8.61 (Outdoor Vending on Private Property), and (3) amending Section 12.04.060 regarding vending in parks.

**BACKGROUND:** On March 14, 1995, the City Council adopted Ordinance No. 95-05 (Outdoor Vendors) to add Chapter 5.20 (Outdoor Vendors) to the Temecula Municipal Code, which regulates stationary outdoor vending on private property. This ordinance prohibits outdoor vending on the public right-of-way. Since the adoption the ordinance, Senate Bill (“SB”) 946 Sidewalk Vendors was signed into law on September 17, 2018, and became effective January 1, 2019. Under the new law, the State mandates local jurisdictions to support and facilitate outdoor vendors (stationary or roaming vendors) within the public right-of-way and City-owned Parks.

SB946 defines Outdoor Vendor as a person who sells food or merchandise from a pushcart, stand, display, pedal-driver cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. There are two types of vendors:

1. Stationary Vendor: a person who vends from a fixed location.
2. Roaming Vendor: a vendor who moves from place to place and stops only to complete a transaction.

SB 946 authorizes local governments to implement operational regulations regarding the time, place, and manner of sidewalk vending only as it relates to objective health, safety or welfare concerns. The more significant operating requirements, and regulations from the law that affect how the City can regulate vending on sidewalks and in public parks are described in the table below.

<b>Operational Regulations</b>	<b>Description</b>
Areas of Operations	Cities cannot restrict roaming or stationary sidewalk vending unless restrictions are directly related to objective health, safety, or welfare concerns. In residential areas, only stationary vendors can be restricted.
City-Owned Parks	Cities cannot prohibit roaming vendors from operating in City-owned parks, but may prohibit stationary vendors, if under contract with a concessionaire.
Hours of Operation	Cities can impose limitations on hours of operation that are not unduly restrictive. In non-residential areas, hours cannot be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same block.
Limits on Number of Vendors	Cities can restrict the number of vendors but only if the restriction is directly related to objective health, safety, or welfare concerns.
Storefront Businesses	Cities cannot require a vendor to obtain permission from any non-governmental entity or individual before the vendor can operate. Cities do not have the authority to restrict a vendor from operating on the sidewalk due to conflicting business uses.
Americans with Disabilities Act (ADA) Compliance	Cities can adopt requirements necessary to ensure compliance with federal, state and local disability access standards.

The City's proposed ordinance includes regulations that are necessary to ensure no interference with:

- The performance of police, fire, and emergency medical personnel response services;
- 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.

- Provide reasonable access for the use and maintenance of sidewalks, pathways, posts, traffic signs or signals, hydrants, restrooms, trash receptacles, firefighting apparatus, mailboxes, as well as access to locations used for public transportation services;
- Reduce exposure to the City for personal injury or property damage claims and litigation that result from outdoor vending; and
- Ensure outdoor vending activities only occur in locations where such vending activities would not restrict sidewalk and pathway access and enjoyment to individuals with disabilities.

The proposed ordinance also includes operational regulations regarding the time, place, and manner of outdoor vending, including, but not limited to the following:

- Sanitation requirements;
- Requirement for liability insurance;
- Size restriction for vending area or vendor cart;
- Restrictions on hours of operation;
- Restriction on noise-making devices;
- Separation requirements from critical City infrastructure to maintain safety;
- Restriction on vending in vicinity of special events;
- Enforcement of the Federal Americans with Disability Act of 1990 standards; and Proximity to sensitive receptors such as schools.

The following sections provide additional rules and regulations established by the Outdoor Vendor Ordinance:

#### Permit Requirements

Government Code Section 51038 (C)(4) allows a local authority to require an outdoor vendor to obtain a permit, subject to certain limitations.

Consistent with SB 946, the City's proposed ordinance would require a valid permit to engage in any outdoor vendor activities. A permit enables the City to effectively regulate individuals who are engaging in outdoor vending activities and ensure outdoor vendors are complying with the rules and regulations set forth by the program.

#### Limitation of Hours of Operation

Government Section 51038 (C)(1) allows a local authority to place limitations on hours of operation that are not unduly restrictive. In non-residential areas, any limitations on the hours of operation for outdoor vending shall not be more restrictive than any limitations imposed on other businesses, or uses on the same street or block.

In nonresidential areas, the ordinance would limit hours of operation for outdoor vending from 7:00 a.m. to 10:00 p.m. daily, which is consistent with most business operations throughout the City, however, the ordinance also provides that the hours of operations will not be more restrictive than the hours of operations imposed on other businesses on the same block.

In residential areas, stationary outdoor vendors are prohibited and the ordinance would limit the hours of operation for roaming outdoor vending from dusk until dawn within 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). These areas tend to be more sensitive to noise and traffic impacts; therefore, warrant a smaller operational window.

#### *Distance Separation Restrictions*

Government Section 51038 (b)(1) allows a city to regulate where outdoor vending occurs if it relates to an objective health, safety, or welfare concern. The distance measurement restrictions specified within the ordinance was based on City's traffic engineer input concerning motor vehicle speed and sight distance standards. The distance separation restrictions or location restrictions that would prohibit outdoor vendors from being located within certain areas or within certain distances of specified structures or buildings, these restrictions are necessary to protect the public health, safety, or welfare. Distance restrictions or location restrictions focus on the following:

- Street intersections (vision triangle)
- Fire hydrants, fire call box or other emergency facility
- Driveways or driveway apron
- Transit stops
- Permitted farmers' market, swap meet, or an area designated for a City Special Event and temporary special permit.
- School building or facilities
- Public picnic area, playground area, or playground equipment
- Civic Center building, Civic Quad and Town Square

#### *Prohibited Areas on Public Property*

Government Section 51038 (8)(E)(1) allows local authority to prohibit outdoor vendors in areas located within the immediate vicinity of a permitted certified farmers market or a permitted swap meet during the limited operating hours of that certified event. In areas with a permitted certified farmer's market or a permitted swap meet, the ordinance would restrict outdoor vendors to maintain a 200 feet distance separation from the event(s). The 200 feet restrictions on distance separation was based on City's traffic engineer input concerning motor vehicle speed, pedestrian flow, and sight distance standards.

Government Section 51038 (8)(E)(2) allows local authority to prohibit outdoor vendors in areas located within the immediate vicinity of an area designated for a temporary special permit issued by local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority's temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. In areas with a designated temporary special permit, the ordinance would restrict outdoor vendors to maintain a 200 feet distance separation from the event(s). The 200 feet restrictions on distance separation was based on City's traffic engineer input concerning motor vehicle speed, pedestrian flow, and sight distance standards.

Government Section 51038(2)(A), which allows prohibition of stationary outdoor vendors in public parks that have a single-concessionaire agreement. It is also consistent with State requirements, roaming vendors are not affected by this restriction. In areas with a single-concessionaire agreement within a public park, stationary outdoor vendors are prohibited.

The proposed ordinance is consistent with SB 946 in that it facilitates the entrepreneurial spirit of small business activates by removing the prohibition on selling goods from portable stands on public right-of-way.

On April 17, 2019, the Planning Commission reviewed the proposed Outdoor Vendor Ordinance and unanimously recommended that the City Council approve the ordinance with the following revisions: (1) that the City have the ability to inspect the carts for fire and safety issues; and (2) that the ordinance include a prohibition of the vending of toy guns, toy weapons, lethal and non-lethal weapons including CO2 powered, spring powered, and air powered weapons. Staff has incorporated these revisions into the ordinance.

**FISCAL IMPACT:** None

**ATTACHMENTS:**

1. Ordinance
2. Planning Commission Agenda Report
3. Planning Commission Resolution
4. Notice of Public Hearing