

CITY OF RIVERBANK

ORDINANCE NO. 2019-006

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA,
ADDING A NEW CHAPTER 126: SIDEWALK VENDING, TO TITLE XI: BUSINESS
REGULATIONS OF THE RIVERBANK MUNICIPAL CODE OF ORDINANCES**

WHEREAS, on September 17, 2018, California Governor Edmund G. 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 Riverbank ("City"); and

WHEREAS, SB 946 took 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; and

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

WHEREAS, regulation of sidewalk vending will benefit the City as a whole by leading to orderly commerce, encouraging entrepreneurship, and providing economic opportunity for the citizens of the City; and

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; and

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; and

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; 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 public streets, parks, plazas, and to protect the public from injury or interference, and allow a clear exit path from commercial businesses 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 RIVERBANK DOES ORDAIN AS FOLLOWS:

SECTION 1: The Riverbank Municipal Code is amended by Adding Chapter 126: Sidewalk Vending to Title XI: Business Regulations, which shall read as follows:

CHAPTER 126: SIDEWALK VENDING

Sections:

- 126.01 Purpose.
- 126.02 Definitions.
- 126.03 Permit Required.
- 126.04 Permit Application.
- 126.05 Permit Issuance.
- 126.06 Operating Conditions.
- 126.07 Prohibited Activities.
- 126.08 Vending Locations.
- 126.09 Public Parks.
- 126.10 Penalties.
- 126.11 Appeals.

§126.01 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 merchandise sales, 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;

(2) Provide reasonable access for the use and maintenance of sidewalks, pathways, poles, posts, traffic signs or signals, hydrants, firefighting apparatus, mailboxes, as well as access to locations used for public transportation services;

(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 individuals with disabilities.

§126.02 Definitions.

For the purposes of this Chapter, terms shall have the following meanings:

CANNABIS. Shall have the same meaning as set forth in Business and Professions Code Section 26001(f) as it may be amended from time to time.

CERTIFIED FARMERS' MARKET. Shall mean a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the California Food and Agricultural Code and any regulations adopted pursuant to that chapter.

CITY. Shall mean the City of Riverbank.

CODE. Shall mean the Riverbank Municipal Code.

COUNTY. Shall mean the County of Stanislaus.

CURB FACE. Shall mean the vertical or sloping surface on the roadway side of the curb.

DIRECTOR. Shall mean the City Manager or his or her designee.

EMERGENCY VEHICLE ACCESS. Shall mean the roadway path or other surface that provides police, fire, or other safety vehicle 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.

FOOD. Shall mean any edible substance.

GOODS OR MERCHANDISE. Shall mean any item that is not food.

HEARING OFFICER. Shall mean an impartial individual designated by the City Manager to determine appeals pursuant to and in accordance with Section 126.

HEATING ELEMENT. Shall mean any device used to create heat for food preparation.

PARK. Shall mean a public park owned and operated by the City.

PUBLIC PROPERTY. Shall mean all property owned or controlled by the City, including, but not limited to, alleys, parks, pathways, plazas, streets, parking lots, sidewalks, and walking trails.

RESIDENTIAL. Shall mean any area zoned exclusively as residential in Chapter 153 of this Code.

ROAMING SIDEWALK VENDOR. Shall mean a sidewalk vendor who moves from place to place and stops only to complete a transaction.

SIDEWALK. Shall mean a public sidewalk or paved pedestrian path or walkway specifically designed for pedestrian travel.

SIDEWALK VENDOR. Shall mean a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

SPECIAL EVENT. Shall mean any temporary permitted event approved by the City.

STATIONARY SIDEWALK VENDOR. Shall mean a sidewalk vendor who vends from a fixed location.

VEND OR VENDING. Shall mean to barter, exchange, sell, offer for sale, display for sale, or solicit offers to purchase, food or merchandise, or to require someone to negotiate, establish, or pay a fee before providing food or merchandise, even if characterized as a donation.

VENDOR. Shall mean a person who vends.

VENDING CART. Shall mean 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.

§126.03 Permit Required.

No person shall engage in, conduct, or carry on the business of vending on a sidewalk or in a park without a sidewalk vending permit issued under the provisions of this Chapter and a business license issued under the provisions of Chapter 110 of this Code.

§126.04 Permit Application.

(A) Every person, prior to engaging in, conducting, or carrying on the business of vending on a sidewalk, shall file an application for a permit with the Director of Public Works,

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:

(1) The legal name, current mailing address and telephone number of the applicant;

(2) If the applicant is an agent of an individual, company, partnership, corporation, or other entity, the name and business address of the principal;

(3) A copy of a California's driver's license or identification number, an individual taxpayer identification number, or a social security number. The number collected 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 names, addresses, and telephone numbers of all persons that will be employed as a sidewalk vendor by the applicant;

(5) A description of the food and/or merchandise for vending;

(6) A description, map, or drawing of the areas in which the sidewalk vendor proposes to operate;

(7) A description and photograph of any vending cart to be used in the operation of the business;

(8) The hours per day and the days per week during which the sidewalk vendor proposes to operate, and whether the sidewalk vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor;

(9) Proof of comprehensive general liability insurance (\$1 million per occurrence/ \$2 million aggregate) protecting the permittee and the City from all claims against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the permittee. Such insurance shall name as additional insured the City and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the City;

(10) An agreement by the applicant to indemnify and hold harmless the City, its officers and employees, for any claim, damages, actions, or causes of action which may arise from or in any manner relate to the permit or the vendor's sidewalk vending activities;

(11) Food vendors must also comply with the following requirements:

(a) Provide the Director a copy of the certification of completion of a County-approved food handler's course and copies of all required approvals from the County's Food Safety Program;

(b) Provide the Director a copy of a valid Mobile Food Permit issued by the Stanislaus County Department of Environmental Health;

(c) Indicate whether food is prepacked or to be prepared on site;

(d) Indicate whether the vendor requires a heating element to prepare food.

(12) Certification by the applicant, under penalty of perjury, that the information contained in the application is true to his or her knowledge and belief; and

(13) Any other reasonable information required by the Director.

(B) Applications for permits shall be filed a minimum of thirty (30) days prior to the date requested for issuance of the permit. Renewal permit applications shall be filed a minimum of thirty (30) days prior to the expiration of any existing permit.

§126.05 Permit Issuance.

(A) Not later than thirty (30) days after the filing of a completed application for a vendor's permit, the applicant shall be notified of the decision on the issuance or denial of the permit.

(B) The Director may issue a sidewalk vendor permit, with appropriate conditions, 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 such sidewalk vending activity will not constitute a fire hazard, and all proper safety precautions will be taken;

(3) 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; The sidewalk vendor has not had a permit revoked within the same calendar year;

(4) The sidewalk vendor's application contains all required information;

(5) The sidewalk vendor has not made a materially false, misleading, or fraudulent statement of fact to the City in the application process;

(6) The sidewalk vendor has satisfied all the requirements of this Chapter;

(7) The sidewalk vendor has paid all applicable fees as set by City Council resolution.

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

(D) A permit issued pursuant to this Chapter shall be effective for a period of one (1) year from the date of issuance.

§126.06 Operating Conditions.

All sidewalk vendors are subject to the following operating conditions when conducting sidewalk vending activities:

(A) All sidewalk vendor permits shall be displayed conspicuously at all times on the vending cart or the sidewalk vendor's person.

(B) Sidewalk vendors shall not leave their sidewalk vending cart unattended. Sidewalk vending carts shall not be stored on public property.

(C) All sidewalk vendors shall allow a City police officer, firefighter, or code enforcement officer, at any time, to inspect their sidewalk vending cart for compliance with the size requirements of this Chapter and to ensure the safe operation of any heating elements used to prepare food.

(D) Every sidewalk vending cart shall not exceed a total length of six (6) feet, a total width of four (4) feet, or a total height, including a roof, umbrella, or awning of eight (8) feet.

(E) No sidewalk vending cart shall be motorized.

(F) All food and merchandise shall be stored either inside or affixed to the sidewalk vendor cart or carried by the sidewalk vendor. Food and merchandise shall not be stored, placed, or kept on any public property. If affixed to the sidewalk vendor cart, the overall space taken up by the sidewalk vendor cart shall not exceed the size requirements provided in this Section.

(G) Sidewalk vendors that sell food shall maintain a trash container in or on their sidewalk vending cart 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 cart. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation.

(H) Sidewalk vendors may not empty vending cart trash containers into any City refuse container.

(I) Sidewalk vendors shall immediately clean up any food, grease, or other fluid or item related to sidewalk vending activities that falls on public property.

(J) Vending carts shall not be accompanied by accessories, including, but not limited to, tables, chairs, benches, and umbrellas except that one (1) chair and one (1) umbrella may be provided for the purpose of allowing the vendor or an employee to be seated in shade.

(K) Sidewalk vendors shall maintain a minimum four (4) foot clear accessible path on the sidewalk, free from obstructions, including sidewalk vending carts, and customer queuing area.

(L) 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.

(M) Sidewalk vendors shall not play or operate any drum, radio, CD Player, phonograph, cell phone, loud speaker, sound amplifier, car radio/CD or tape, television, or similar sound-amplifying device, whether mobile or from a fixed location upon the public streets, public rights-of-way, or in public parks.

(N) Sidewalk vendors shall not smoke or use tobacco or cannabis products on any public property during their hours of operation, including during their breaks and meals. Public property includes, but is not limited to public streets, public rights-of-way, or in public parks.

§126.07 Prohibited Activities.

(A) Sidewalk vendors shall comply with all operating conditions, including those conditions set forth in Chapters 92.50 (smoking restrictions), 93 (noise regulations), 94 (park regulations), 114 (fortune-telling regulations), 118 (adult entertainment regulations), 119 (massage regulations), 120 (cannabis regulations), 123 (tobacco and e-cigarette regulations), 125 (tattoo regulations), and 153 (alcohol regulations) of this Code.

(B) 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 gun, adult-oriented material, cannabis, alcohol, tobacco, or electronic cigarette products;

(4) Offering services such as fortune-telling, massage, and tattoos;

(5) In areas not zoned exclusively for residential use, all sidewalk vendors are prohibited from conducting sidewalk vending activities between the hours of 10:00 p.m. and 7:00 a.m. daily, except that the hours of operation shall not be more restrictive than the hours of operation imposed on other businesses or uses on the same street;

(6) In areas zoned exclusively for residential use, roaming sidewalk vendors are prohibited from conducting sidewalk vending activities between the hours of 6:00 p.m. and 9:00 a.m. daily;

(7) Knowingly making false statements or misrepresentations during the course of offering food or merchandise for sale;

(8) Impeding or obstructing ingress to or egress from any private property or any structure, parking space or loading facility;

(9) Selling or otherwise conducting transactions with persons in moving vehicles or vehicles illegally parked or stopped;

(10) Causing vehicles to stop in traffic lanes or causing persons to stand in traffic lanes or parking spaces;

(11) Vending in a manner that blocks or obstructs the free movement of vehicles, including parked vehicles;

(12) Damaging public or private property, including trees, shrubs, grass, flowers, plants, or vegetation.

§126.08 Vending Locations.

(A) Stationary sidewalk vending is prohibited in the following areas:

(1) Any residential zone in the City.

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

(1) On any private property without the express written consent of the owner or lessee of the property.

- (2) On any designated emergency vehicle access way.
- (3) Within twelve (12) inches of any curb face on all roads.
- (4) Within fifteen (15) feet of any entrance or exit to a building, structure or facility.
- (5) Within fifty (50) feet of another sidewalk vendor.
- (6) 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) Trash or recycling containers, bike racks, benches, bus stops, or similar public use items.
- (7) On any sidewalk where vending equipment and queuing patrons would restrict access requirements under the Americans with Disabilities Act.
- (8) 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.
- (9) Within the immediate vicinity of an area designated for a special event permit issued by the City, during the limited duration of the special permit. If the City provides any notice, business interruption mitigation, or other rights to affected businesses or property owners under the City's special permit, such notice will also be provided to any sidewalk vendors specifically permitted to operate in the area, if applicable.

(C) Locations for vending shall be approved by the Director. In addition to any restrictions provided by this Section, vending locations may be further limited by the Director only if the limitation is directly related to objective health, safety or welfare concerns, including but not limited to:

- (1) The ability of the site to safely accommodate the use;
- (2) Pedestrian safety.

(D) Vending locations may change only upon written request by an applicant and written approval by the Director.

§126.09 Public Parks.

In addition to the conditions, restrictions, and prohibited activities provided in Chapters 92.50 (smoking restrictions), 93 (noise regulations), 94 (park regulations), 114 (fortune-telling regulations), 118 (adult entertainment regulations), 119 (massage regulations), 120 (cannabis regulations), 123 (tobacco and e-cigarette regulations), 125 (tattoo regulations), and 153 (alcohol regulations) of this Code, sidewalk vendors operating in a public park shall not:

- (A) Operate outside the park's hours of operation;
- (B) Operate on, or within twenty-five (25) feet of, any sports field or playground equipment area;
- (C) Utilize any bench, table, barbeque pit, covered gathering area, or other publicly-owned structure or amenity in the park in any way as part of the sidewalk vending operation;
- (D) Operate within twenty-five (25) feet of any bench, table, barbeque pit, covered gathering area, or other publicly-owned structure or amenity in the park;
- (E) A stationary sidewalk vendor shall not sell food or merchandise or engage in any sidewalk vending activities at any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire, while the concessionaire is in operation.

§126.10 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:

- (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.

(B) 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.

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

(D) The Director may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(E) The Director may deny, suspend, or revoke any permit for any of the following reasons:

(1) Fraud or misrepresentation contained in the application for the permit;

(2) Fraud or misrepresentation made in the course of carrying on the business of vending;

(3) Conduct of the permitted business in such manner as to create a public nuisance, or constitute a danger to the public health, safety, or welfare.

(F) Denial, void, or revocation of the business license shall result in revocation of the vendor permit.

(G) Administrative fines shall be imposed and enforced pursuant to Chapter 99 of the Municipal Code of Riverbank.

(H) Nothing in this chapter shall be deemed to prevent the city from commencement of any available administrative, civil and/or criminal provisions of law as an alternative and/or in addition to the enforcement proceedings set forth in this chapter.

§126.11 Appeals.

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

(B) Appeals shall be initiated within twenty-one (21) calendar days of the decision to deny an application for a permit.

(C) Appeals of decisions to deny an application for a permit 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 which is 50% of the cost of the permit.

(E) An appeal shall be scheduled for a hearing before the hearing officer within thirty (30) calendar days of the filing of the appeal unless both the appellant and the hearing officer consent to a later date.

(F) 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 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.

(G) After the hearing, the hearing officer shall affirm, modify or reverse the original decision to deny an application for a permit. When a decision 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.

SECTION 2. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted 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 3. This Ordinance shall become effective thirty (30) days from and after its final passage (11/22/2019), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on October 8, 2019. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 22ND day of October, 2019; motioned by Councilmember District 1 Luis Uribe, seconded by Councilmember District 3 Cal Campbell, and moved said ordinance by a City Council roll call vote of 5-0:

AYES: Campbell, Fosi, Uribe, Barber-Martinez, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAINED: None

ATTEST:

APPROVED:

(ORIGINAL DOCUMENT ON FILE WITH THE CITY CLERK)

Marisela H. Garcia
Asst. City Manager/Acting City Clerk

Richard D. O'Brien
Mayor

APPROVED AS TO FORM:

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Tom P. Hallinan, City Attorney