

ORDINANCE NO. 2019-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAREMONT, CALIFORNIA, ADDING CHAPTER 5.50 TO THE CLAREMONT MUNICIPAL CODE AND AMENDING SECTION 5.40.010 AND CHAPTER 11.02.090 OF THE CLAREMONT MUNICIPAL CODE, RELATING TO REGULATION OF STREET VENDORS

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 Claremont;

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;

WHEREAS, existing provisions of the Claremont Municipal Code regulate commercial solicitation (including activities of sidewalk vendors) in a manner that substantially complies with the provisions of SB 946; however, the City's Municipal Code does not currently have any regulations that specifically address sidewalk vending, and to the extent the City's existing solicitation regulations are inconsistent with SB 946, they would not be enforceable;

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 (41 U.S.C. § 12131, et seq.) 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 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;

THE CITY COUNCIL OF THE CITY OF CLAREMONT DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein.

SECTION 2. Chapter 5.50, entitled "Regulation of Sidewalk Vendors," is hereby added to the Claremont Municipal Code to read in its entirety as follows:

Chapter 5.50

Regulation of Sidewalk Vendors

Sections:

5.50.000	Purpose
5.50.010	Definitions
5.50.020	Permit required
5.50.030	Issuance of permit
5.50.040	Operating conditions
5.50.050	Prohibited activities and locations
5.50.060	Penalties
5.50.070	Appeals
5.50.000	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, codified in Chapter 6.2 of Part 1 of Division 1 of Title 5 of the California Government Code, commencing at Section 51306). 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:

2. 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;

3. 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; and

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

5. Ensure sidewalk vending activities occur only in locations where such activities would not restrict sidewalk and pathway access and enjoyment to individuals with disabilities.

5.50.010 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 9.23.010 of this code, or any successor section.

(b) "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.

(c) "Curb face" means the vertical or sloping surface on the roadway side of the curb.

(d) "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.

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

(f) "Hearing officer" means an impartial individual designated by the Community Development Director, or his or her designee, to determine appeals pursuant to and in accordance with Section 5.50.070.

(g) "Heating element" means any device used to create heat for food preparation.

(h) "Marijuana" means the substances defined in Section 9.72.020 of this code, or any successor section.

(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.

(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 urban or commercial areas surrounded by commercial buildings or houses on small lots with few places for people to gather, relax, or enjoy the outdoors that is smaller than or equal to 35,000 square feet.

(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 16 of this code, including without limitation RS, HC, RR, H, RM, HDR, and AV 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) "Sidewalk" means that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.

(r) "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.

(s) "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.

(t) "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.

(u) "Special event" means any temporary permitted event approved by the City, including but not limited to, Non-Commercial Solicitation Permits for Charitable, Political, and Religious Solicitation.

(v) "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.

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

(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.

5.50.020 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 Community Development Director, or his or her designee, in accordance with sections 5.40.020 and 5.40.030 of this code and the provisions of this chapter. If any portion of the section 5.40.020 and/or section 5.40.030 conflict with the requirements of this section, the provisions of this section shall apply.

B. Application. A written application for a sidewalk vendor permit shall be filed with the Community Development Director, 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. 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);

3. 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;

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

5. The number of sidewalk vending receptacles the sidewalk vendor will operate within the City under the permit;

6. Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor;

7. The day(s) and hours of operation the stationary sidewalk vendor intends to operate at such location(s);

8. The location(s) in the City where the stationary sidewalk vendor intends to operate;
9. The dimensions of the sidewalk vendor's sidewalk vending receptacle(s), including a picture of each sidewalk vending receptacle operating under the permit;
10. Whether the sidewalk vendor will be selling food, merchandise, or both;
11. 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;
12. If the vendor is selling merchandise, a description of the merchandise to be sold;
13. A copy of the health permit required for any sidewalk vendors selling food;
14. 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;
15. An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, state, and federal laws;
16. A certification that, to his or her knowledge and belief, the information contained within the application is true and correct;
17. 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, attorneys' 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;
18. 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;
19. 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 Assistant City Manager, and

20. Any other relevant information required by the Community Development Director or his or her designee.

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 are only applicable to the individual(s) named on the application. If the 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.

5.50.030 Issuance of permit

A. Within thirty (30) calendar days of receiving a complete application, the Community Development Director, or his or her designee, 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 Community Development Director, or his or her designee, 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, regardless of when issued, expire one year from the date on which they were issued.

5.50.040 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. Sidewalk vendors shall not set up, maintain, or permit the use of any additional table, crate, carton, rack, or any other device to increase the selling or display capacity of their stand where such terms have not been described by their application.

B. The sidewalk vendor permit shall always be displayed conspicuously 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, or Community Improvement Coordinator, 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 considered when assessing the total size limit of a sidewalk vending receptacle. Sidewalk vendors serving food that are not considered shelf stable (e.g., commercially bagged potato chips, commercially bagged candy) shall have access to hot and cold water on their vending receptacles. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation.

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

J. Sidewalk vendors shall comply with the following noise standards:

1. It is unlawful for any sidewalk vendor to shout, make any outcry, blow a horn, ring a bell or use any sound device, including any loud speaking radio or sound-amplifying system while vending where such sound exceeds the City's noise standards as set forth Chapter 16.154.

2. No sidewalk vendor shall operate or permit the operation of any sound amplification system to advertise, to draw attention to the presence of the sidewalk vendor or to communicate commercial information to the general public, except to request emergency assistance or warn of a hazardous situation.

K. 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.

L. Sidewalk vendors shall not vend to or otherwise conduct transactions with persons in moving vehicles or vehicles illegally parked or stopped.

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

5.50.050 Prohibited activities and locations

A. Sidewalk vendors shall comply with all operating conditions, including those conditions set forth in Section 5.50.040.

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 adult-oriented material, marijuana, or alcohol;
4. Using an open flame on or within any sidewalk vending receptacle;

5. 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 or consistent with the hours of operation of the businesses on the same street. 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.

6. 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;

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

8. Blocking or impeding the path of the person(s) being offered food or merchandise to purchase;

9. 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

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

C. Sidewalk vendors shall not engage in sidewalk vending activities at the following locations:

1. Within twelve (12) 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. On any public property that does not meet the definition of a sidewalk or pathway including without limitation any alley, park, street, roadway or parking lot;

5. 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;

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 one hundred (100) 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. Stationary sidewalk vending activities shall only occur on sidewalks or pathways with a minimum width of eight (8) feet or larger;

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;

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

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

12. Sidewalk vendors shall not engage in sidewalk vending activities that would violate provisions of this code relating to visibility requirements for streets, alleys, driveways, and intersections;

13. Stationary sidewalk vendors 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;

14. Sidewalk vendors shall not vend in pocket parks, including but not limited to, Shelton Park. These parks are situated in urban areas or commercial districts

and serve to provide a respite for residents and visitors. These parks are small by design and any vending or commercial activity in these pocket parks shall prevent 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. Due to their small size, sidewalk vending in these pocket parks will result in an undue concentration of activity, resulting in health, safety, and welfare concerns;

15. Sidewalk vendors shall not vend 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;

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

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

18. Within twenty-four (24) inches of a parallel parking space;

19. On any sidewalk not adjacent to a state highway where vending equipment and queuing patrons would reduce clearance to less than four (4) feet;

20. On any sidewalk adjacent to a state highway where vending equipment and queuing patrons would reduce clearance to less than five (5) feet, with temporary restrictions of no less than three (3) feet;

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

22. On any sidewalk where vending equipment and queuing patrons would jeopardize the safety of any person.

D. 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, or traffic barriers.

5.50.060 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 Community Development Director, or 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.

5.50.070 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 or request an advance deposit hardship waiver pursuant to Claremont Municipal Code section 1.14.070.

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.

SECTION 3. Section 11.02.090 of the Claremont Municipal Code ("Commercial Enterprises") is hereby amended to read as follows (*addition underlined*):

11.02.090 Commercial enterprises.

Public parks in the City are intended as places for recreation and relaxation and the free exchange of ideas, but not as a forum for commercial enterprise. Therefore, no person shall sell, offer or solicit the sale of goods or services within a park, or pass out commercial handbills or advertising, or offer commercial teaching services within a park. This prohibition shall not apply to such activity when authorized by a special event permit, a sidewalk vendor permit, or other City permit.

SECTION 4. The definition of "Solicitation" in Section 5.40.010 of the Claremont Municipal Code is hereby amended to read as follows (*addition underlined; deletion struck out*):

"Solicitation" includes the act of any person, whether a resident of the City or not, traveling by foot, vehicle or any other type of conveyance who goes from house to house, business to business, from place to place or in or along any highway, street or sidewalk within the City either: (1) requesting money, credit, funds, contributions, personal property or anything of value; (2) taking or attempting to take orders for the sale of any goods, wares, merchandise or services of any kind, or description for future delivery or for services to be performed in the future; or (3) selling and making immediate delivery of any goods, wares, merchandise or services of any kind or description, commonly referred to as "peddling." Notwithstanding the foregoing, the term "solicitation" does not include "sidewalk vending" in accordance with Chapter 5.50 of this Code and subject to a valid sidewalk vendor permit.

SECTION 5. This Ordinance shall supersede all prior ordinances and provisions of the Claremont Municipal Code and sections thereof inconsistent herewith.

SECTION 6. If any portion of this Ordinance, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, of the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

SECTION 7. The City Council finds the introduction and adoption of this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3. CEQA Guidelines Section 15378(b)(2) excludes "[c]ontinuing administrative. . . activities, such as . . . general policy and procedure making" and Section 15378(b)(5) excludes "[o]rganizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment" from its definition of "project." Even if this Ordinance were a "project," it would be exempt from environmental review under CEQA Guidelines Section 15061(b)(3)'s "general rule" that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Here, it can be seen with certainty that there is no possibility that this Ordinance, in and of itself, will have a significant effect on the environment. On its own, this action will not result in any physical changes to the environment.

SECTION 8. The mayor shall sign this ordinance and the city clerk shall attest and certify to the passage and adoption of it, and within fifteen (15) days, publish a summary of the Ordinance in the Claremont Courier, a weekly newspaper of general circulation, printed, published, and circulated in the City of Claremont.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2019.

Mayor, City of Claremont

ATTEST:

City Clerk, City of Claremont

APPROVED AS TO FORM:



City Attorney, City of Claremont