

ORDINANCE NO. 1171

AN ORDINANCE OF THE CITY OF LOS BANOS AMENDING TITLE 9 CHAPTER 3 OF THE LOS BANOS MUNICIPAL CODE ADDING A NEW ARTICLE 45 TO CREATE A SIDEWALK VENDING PROGRAM, AMENDING RELATED PROVISIONS OF THE LOS BANOS MUNICIPAL CODE, AND MAKING A DETERMINATION OF EXEMPTION UNDER CEQA

RECITALS

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

WHEREAS, SB 946 limits city regulation of sidewalk vending to restrictions that are directly related to objective health, safety, or welfare concerns and prohibits punishment for street vending-related violations unless it is through a civil fine.

WHEREAS, SB 946 recognizes that “California has an interest in the regulation of traffic ... whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk,” and has acknowledged that there are regulations that are directly related to objective health, safety, or welfare concerns that a city may adopt, which include, but are not limited to, regulations concerning hours of operation, sanitation, sidewalk access, health and vendor permits, compliance with other generally applicable laws, registration requirements, and interference with other special events or permitted activities.

WHEREAS, As a result, the City desires to update its municipal code to establish a sidewalk vending program which will govern sidewalk vendors operating within the City and impose sidewalk vending regulations that are consistent with state law, while maintaining regulations that are directly related to, and furthers, the objective health, safety, and welfare of the City.

WHEREAS, The City Council finds that the establishment of a sidewalk vending program will benefit the City as a whole by facilitating entrepreneurship and providing economic opportunity for people to support themselves and their families, and by contributing to a diversity of food options and lively streets.

WHEREAS, The City Council finds that the act of vending on sidewalks and other areas of the public right-of-way also 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 sidewalk vending 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, 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 sidewalk 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 sidewalk vending 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 sidewalk vending in public parks and trail ways are 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 sidewalk vending in residential areas are necessary to ensure that such areas are protected from excessive noise and traffic impacts while allowing economic opportunities for sidewalk vendors.

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.

WHEREAS, The City Council of the City of Los Banos hereby finds and determines that all of the above Recitals are true and correct and incorporates such Recitals into this Ordinance.

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

Section 1. Title 9, Chapter 3 of the Los Banos Municipal Code is hereby amended to add a new Article 45, which shall read as follows:

“Article 45 Sidewalk Vending

Sec. 9-3.4500 Purpose.

(a) The purpose of this Article is to establish a sidewalk vendor permitting and regulatory program that complies with Senate Bill 946. The provisions of this Article 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 health, safety and welfare, restrictions on street vending are necessary to:

(1) Prevent interference with the performance of police, firefighter, and emergency medical personnel services;

(2) Prevent 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, restrooms, trash receptacles, firefighting apparatus, mailboxes, as well as access to locations used for public transportation services; and

(4) Reduce exposure to the City from personal injury or property damage claims and litigation.

Sec. 9-3.4510 Definitions.

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

“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.

“Director” means the Community and Economic Development Director or the Director’s designee.

“Person” means one or more individuals, 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.

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

“Sidewalk Vendor” means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

“Stationary Sidewalk Vendor” means a sidewalk vendor who vends from a fixed location.

“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.

“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, block party, or temporary use permit, for purposes including, but not limited to, City or privately sponsored parades, street fairs, or street closures.

“Vend” or “Vending” shall mean the sale, offer for sale, soliciting, preparation, display, barter, or exchange, of prepared, pre-packaged or unprepared, unpackaged food or foodstuffs, beverages, goods, or merchandise of any kind.

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

Sec. 9-3.4520 Permit Required.

(a) No person may conduct or engage in sidewalk vending in the City without first obtaining and having in his or her possession a sidewalk vending permit issued by the City in accordance with this Article. No permit granted herein shall confer any vested right to any person or business for more than the permit period. All sidewalk vendors subject to this Article shall comply with the provisions of this Article as they may be amended hereafter.

(b) A sidewalk vending permit shall not be required for events permitted pursuant to a lawfully issued temporary special permit.

Sec. 9-3.4530 Permit Application.

To apply for a sidewalk vending permit, a person must submit an application with the Director or designee, accompanied by a nonrefundable processing fee in an amount

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;

(r) An acknowledgement that use of public property is at the sidewalk vendor's 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 their own risk;

(s) An acknowledgement that the sidewalk vendor will obtain and maintain throughout the duration of any permit issued under this Article insurance required by this Article;

(t) Any other reasonable information regarding the time, place, and manner of the proposed vending.

(u) Prior to the issuance of a sidewalk vendor permit, the applicant shall cause to be filed with the Director a LiveScan background check, including a LiveScan background check for all employees engaging in vending activities, conducted by the California Department of Justice within the previous six (6) months of the application date. The Director shall furnish each applicant with a LiveScan request form for use at the Los Banos Police Department.

(v) No person shall engage in, conduct or carry on the business of a sidewalk vendor unless there is on file with the City, in full force and effect at all times, documents issued by an insurance company authorized to do business in the State of California evidencing that the operator is insured (and naming the City as an additional insured) under a liability insurance policy providing minimum coverage of One Million and No/100ths (\$1,000,000.00) Dollars for injury or death arising out of the sidewalk vending activities. All insurance companies affording coverage shall be required to add the City as an additional insured under their insurance policy. A certificate of insurance and a copy of the policy endorsement shall be provided to the City prior to the issuance of a sidewalk vendor permit.

(w) Prior to issuance of a sidewalk vendor permit, the applicant shall have any vending cart to be used for vending inspected for safety by the Fire Department.

Sec. 9-3.4540 Criteria for Approval or Denial of Permit.

(a) Within thirty (30) calendar days of receiving a complete application, the Director, or the Director's 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 sidewalk vending activity 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 sidewalk vending activity 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 sidewalk vending activity will not constitute a fire hazard, and all proper safety precautions will be taken;

(4) The 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 applicant 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 Article;

(6) The applicant has not had a permit revoked within the past twelve (12) months;

(7) The applicant's application contains all required information;

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

(9) The applicant has satisfied all the requirements of this Article;

(10) The applicant has paid all applicable fees;

(11) The applicant is required to register under the provisions of California Penal Code Section 290.

(12) Within three (3) years of the date of the application, the applicant has been convicted in a court of competent jurisdiction or pled nolo contendere to any felony offense involving the sale of a controlled substance specified in California Health and Safety Code Sections 11054, 11055, 11056, 11057 or 11058, or at the time of application is on probation or parole for any offenses set forth in this section for an offense that was committed within three years of the date of the application.

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

Sec. 9-3.4550 Permit Expiration and Renewal.

A sidewalk vending 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 sidewalk vending permit.

Sec. 9-3.4560 Permit Rescission.

The Director may rescind a permit issued to a sidewalk vendor for a fourth violation or subsequent violation of this Article. A sidewalk vendor whose permit is rescinded may apply for a new sidewalk vending permit upon the expiration of the term of the rescinded permit.

Sec. 9-3.4570 Appeals.

The decision of the Director or designee may be appealed as provided by the appeal procedure provided in Part 6 of Article 23 of this Chapter.

Sec. 9-3.4580 Permits Nontransferable.

A sidewalk vendor permit is nontransferable. Any change in ownership or operation of a sidewalk vendor or sidewalk vending cart requires a new permit under this Article.

Sec. 9-3.4590 Operating Requirements.

All sidewalk vendors shall comply with the following:

(a) No sidewalk vendor shall vend in any of the following locations:

(1) Upon or within any roadway, median strip, or dividing section.

(2) Along sidewalks, pathways, courtyards, and grounds adjacent to the buildings and facilities that make up the Los Banos Community Center, the Los Banos City Hall, the Los Banos Courthouse, the Los Banos Public Library, the Los Banos Police Station, the Los Banos Fire Station(s), the Memorial Hospital of Los Banos, and along the sidewalks of Pacheco Boulevard, Mercey Springs Road, Badger Flat Road, Pioneer Road, H Street from 2nd Street to Badger Flat Road, within the Los Banos Rail Corridor and Canal Side Trails.

(3) 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 market or swap meet, or the limited duration of the temporary special permit.

(4) Within three hundred (300) feet of the property line of any public or private school grounds, between the hours of 8:00 a.m. and 5:00 p.m. each day that school is in session.

(5) Within three hundred (300) feet from any place of worship or child care center.

(6) Within one hundred (100) feet of a public picnic area, playground area, playground equipment, or athletic field or court.

(7) Within four hundred (400) feet of another sidewalk vendor.

(8) Within twenty-five (25) feet of any street or alley intersection;

(9) Within ten (10) feet of a fire hydrant or other emergency facility.

(10) Within ten (10) feet of a curb that has been designated as a white, yellow, green, blue, or red zone, or a bus zone.

(11) Within twenty (25) feet of any driveway approach or entrance to a parking lot or parking garage.

(12) Within ten (10) feet of an entrance or exit of any building or structure.

(13) Within ten (10) feet of any public trash receptacle, bike rack, bench, bus stop, or similar public use item.

(14) In any City parking lot.

(15) On private property without the consent of the property owner.

(b) Stationary sidewalk 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.

(c) Stationary sidewalk vendors shall not vend in areas that are zoned residential.

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

(e) Sidewalk vending is permitted between the hours of 9:00a.m. - 7:00p.m., daily, except as follows:

(1) In nonresidential areas, the hours of operation shall not be more restrictive than the hours of operation imposed on other businesses or uses located on the same block.

- (2) In public parks sidewalk vending shall be permitted only during hours open to the public.
- (f) Sidewalk vendors shall provide a trash receptacle for customers and ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash without resort to existing trash receptacles located on any block for use by the general public.
- (g) Prior to leaving any vending location, the sidewalk vendor shall pick up, remove, and dispose of all trash generated by the vending operations or the vendor's customers within a fifteen (15) foot radius of the vending location. Sidewalk vendors shall not throw, deposit, or leave, or permit to be thrown, deposited, or left, any trash, food, or other discarded or abandoned objects, in or upon any street, sidewalk, path, gutter, storm drain, inlet, catch basin, or other drainage structure, or upon any public or private lot of land in the City, so that the same might be or become a pollutant.
- (h) Sidewalk vendors shall possess and display in plain view on the vending cart and a valid sidewalk vending permit issued pursuant to this Article and if selling food a valid health permit from Merced County Department of Public Health . Sidewalk vendors shall possess at all times while vending any other permit required by any governmental agency. A sidewalk vendor engaged in sidewalk vending shall wear, on their person, identification with a picture and name issued by the City.
- (i) Vending carts shall not be chained, fastened, or affixed at any time to any building or structure, including but not limited to lampposts, parking meters, traffic signals, fire hydrants, benches, bus shelters, trashcans, 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.
- (j) Vending carts shall not be left unattended or stored on public property or within the public right-of-way.
- (k) Sidewalk vendors shall comply with all applicable state and local laws, including without limitation state food handling, labeling, and preparation requirements; fire codes and regulations; and the Americans with Disabilities Act of 1990 and other disability access standards (both state and federal).
- (l) No tables, chairs, fences, shade structures, balloons, flags, banners, on-site furniture, or any freestanding signs shall be permitted in conjunction with the sidewalk vendor's vending activities.
- (m) The vendor shall not attach or use any water line, electrical line, or gas line during vending operations.
- (n) Exterior storage or display of refuse, equipment, materials, goods, wares, or merchandise associated with the vendor is prohibited.
- (o) No sound amplification equipment, music or live entertainment may be used in conjunction with any sidewalk vendor sales.
- (p) A Vending Cart shall not be wider than four (4) feet at its widest point (exclusive of waste containers) and no longer than seven (7) feet at its longest point (exclusive of waste containers). A canopy or other similar overhead cover may be used but no portion of this cover (exclusive of vertical support poles or struts) shall be lower than seven (7) feet above the sidewalk. Any and all vertical supports for this cover shall be totally confined within the horizontal dimensions (width and length) of the Vending Cart.
- (r) Any power used in a Vending Cart shall be contained wholly within the Cart. No cords, hoses, pipes, bottles, canisters, or other conductors or containers of power or fuel shall extend from any source external to or detached from the Vending Cart while the Vending Cart is in operation upon a City sidewalk.

Sec. 9-3.4100 Administrative Citations.

(a) A violation of this Article by a sidewalk vendor who has a valid sidewalk vending permit from the City is punishable only by an administrative citation pursuant to Chapter 11 Title 4 of this Code 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 sidewalk vending without a valid City sidewalk vending permit is punishable by an administrative citation pursuant to Chapter 11 Title 4 of this Code 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 sidewalk 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 Article 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 Article.

(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 2. Sub Section 9-3.3606(a) (4) of Article 36, Chapter 3 Title 9 of the Los Banos Municipal Code is amended to read as follows:

“(4) Except as set forth in Section 9-3.3608(b) no mobile food vendor shall be located or maintained on public property, including a public sidewalk or other pedestrian path, bicycle pathways, walking trails, public parks or inconsistent with any other City regulations;”

Section 3. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 5. The proposed amendments to the Los Banos Municipal Code do not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that this ordinance amendment is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines section 15601(b)(3) and is not subject to environmental review.

Section 6. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Faria and seconded by Council Member Jones on the 17th day of April, 2019.

Passed on the 15th day of May, 2019 by the following vote:

AYES:	Council Member Faria, Johnson-Santos, Jones, Lewis, Mayor Villalta
NOES:	None
ABSENT:	None

APPROVED:



Michael Villalta, Mayor

ATTEST:



Lucille L. Mallonee, City Clerk