

EXHIBIT 'A' of ORDINANCE 2023-XX

CHAPTER 16B

SIDEWALK VENDING

Sections

- 16B.1 Intent and purpose.**
- 16B.2 Definitions.**
- 16B.3 Sidewalk vending standards.**
- 16B.4 Restricted vending times and locations.**
- 16B.5 Permit applicability.**
- 16B.6 Sidewalk vending permit application and fees.**
- 16B.7 Sidewalk vending permit approval, conditions, denial, or revocation.**
- 16B.8 Sidewalk vending permit expiration and renewal.**
- 16B.9 Administrative citations.**
- 16B.10 Impoundment.**

16B.1 INTENT AND PURPOSE.

(a) The city council of the city of Gilroy declares that:

(1) If properly regulated, sidewalk vending can foster vibrant public spaces, promote a diverse and inclusive local economy, and create economic opportunities for low-income and immigrant communities.

(2) At the same time, inadequately regulated sidewalk vending has caused and will be expected to cause in the future negative impacts to the public health, safety and welfare. For example, inadequately regulated sidewalk vending has caused or been associated with numerous negative consequences in Gilroy and as reported by staffs of other cities as well, including unsafe overcrowding; decreased accessibility for persons with disabilities; a lack of adequate access for first responder and emergency personnel; the monopolization of public spaces for private commercial use; traffic safety concerns for motorists, bicyclists, and pedestrians; diversion of pedestrians into bike lanes or vehicular lanes; parking congestion; accumulation of trash and pollution in public spaces; altercations arising amongst vendors competing for locations from which to vend their food or goods; foodborne illnesses; the sale of counterfeit goods; and a lack of sales tax being collected.

(3) Sidewalk vending must be regulated to address the concerns discussed above.

(b) The purpose of this chapter is, therefore, to promote the public peace, safety, health, and welfare by ensuring rapid access for first responder and emergency personnel; improving sidewalk accessibility for persons with disabilities; facilitating ingress into and egress from vehicles, maintaining rights-of-way to buildings, and public spaces; maximizing use and promoting maintenance of public rights-of-way, parks, and other public spaces; and reducing the city's exposure to civil liability.

16B.2 DEFINITIONS.

For the purpose of this chapter, the following words and phrases are defined as follows:

(a) “Food” means raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part for human consumption, chewing gum and/or any other items defined as food by the California Retail Food Code.

(b) “Mobile vendor” means any person in charge of or driving any motorized mobile vending vehicle requiring a state driver’s license to operate, either as an agent, employee, or otherwise under the direction of the owner.

(c) “No vending or limited vending zone” means an area where sidewalk vending is prohibited or limited due to objective public health, safety, or welfare concerns. The city council may establish no vending or limited vending zones by resolution, as set forth in Section 16B.4 (c).

(d) “Roaming sidewalk vendor” means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(e) “Sidewalk vending” means to sell, offer for sale, expose or display for sale, solicit offers to purchase, or to barter food, goods, or merchandise on any public sidewalk, pedestrian path, park, or other public property, with or without the assistance of a vending device, or to require someone to pay a fee or to set, negotiate, or establish a fee before providing any such food, goods, or merchandise, even if characterized by the sidewalk vendor as a donation.

(f) “Sidewalk vending permit” means a permit or card issued by the city to a sidewalk vendor pursuant to Section 16B.7.

(g) “Sidewalk vendor” means a person who sells food or merchandise from a vending device or from one’s person, upon a public sidewalk, pedestrian path, park, or other public property. This term is inclusive of both roaming and stationary sidewalk vendors.

(h) “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

(i) “Vending device” means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, nonmotorized conveyance (including trailers), freestanding table, chair, box, stand, or any container, structure, or other object used or capable of being used for holding, selling, advertising, or displaying tangible things, together with any associated seating facilities. “Vending device” does not include any street furniture such as benches or planters, any other structure permanently installed by the city of Gilroy or with the consent of the city of Gilroy.

(j) “Enforcement official” means any person designated by the city administrator to enforce this chapter and includes, but is not limited to: community development department or recreation division staff tasked with code enforcement or compliance, all Gilroy police department sworn personnel and community service officers, and/or any city-contracted code enforcement officer or specialist.

16B.3 SIDEWALK VENDING STANDARDS.

(a) Sidewalk vendors shall comply with this section in order to prevent unreasonable conflicts with pedestrian and vehicular traffic, prevent improper disposal of trash, and to assure that pedestrians (including pedestrians with disabilities) have adequate and accessible thoroughfares,

to minimize trip and fall hazards, to address driver visibility concerns, and to address other public health, safety, and welfare concerns:

- (1) Vending devices shall be at least eighteen inches in height. No person engaged in sidewalk vending may display or sell their wares on the ground, or on a cloth, tarp, or other similar material on the ground.
- (2) No food sidewalk vendor may be accompanied by or in the custody or possession of an animal, except a service animal. Merchandise sidewalk vendors may have a leashed animal.
- (3) To maintain accessibility standards, sidewalk vendors shall not place or allow any obstruction to be placed on the sidewalk that would reduce the width of the sidewalk below a minimum of forty-eight inches excluding curb, and excluding any sidewalk areas that are made non-passable due to any natural barriers or other existing conditions or obstructions such as posts, parking meters, street trees, planters, or signs that are located on the sidewalk, except for the brief duration of time for a roaming sidewalk vendor to conduct a sale. Sidewalk vendors shall maintain their vending devices at all times in a manner that provides sufficient access to the sidewalk and avoids impeding the flow of pedestrian traffic. At no time, may a sidewalk vendor operate in such a fashion that would violate or cause a violation of the Americans with Disabilities Act or state law on accessibility, or cause the sidewalk to narrow in a fashion that violates the accessible path of travel for persons with disabilities, including persons who use wheelchairs or other mobility devices.
- (4) Sidewalk vendors shall not use easy-ups, tents, or similar shade structures unless their sidewalk vending permit specifically authorizes such use. Use of these types of structures shall be requested in the sidewalk vending permit application. The size of a city-permitted shade structure or vending device may vary depending on the location, but in no event may a sidewalk vendor's total operational size (including any shade structure or vending display device) exceed the total operational size allowed in the permit issued to the sidewalk vendor.
- (5) Sidewalk vendors shall not vend to occupants of motorized vehicles in operation.
- (6) Sidewalk vendors shall not cause onlookers, customers, or others to obstruct the accessible path of travel for persons with disabilities, or the free flow or view of pedestrian or vehicular traffic.
- (7) To maintain the free movement of pedestrians and/or vehicles, sidewalk vendors shall not use signs in connection with the sale, display, or offering for sale of items, except for those signs affixed to or painted on a vending device and are no larger than the vending device itself.
- (8) For the health, safety, and welfare of the community and pedestrians when using its public sidewalks, paths, and parks, generators and cooking methods that involve deep fat frying and wood fired cooking devices, which present fire, smoke, burn, and slipping hazards, are prohibited. This limitation does not prohibit sidewalk vendors from using other cooking methods to heat or prepare foods.
- (9) Sidewalk vendors must provide a trash receptacle for customers and employ good faith efforts to ensure proper disposal of customer trash. Prior to leaving any vending

location, the sidewalk vendor shall pick up, remove, and dispose of all trash generated by the vending operations and/or the vendor's customers within a twenty-foot radius of the vending location. Sidewalk vendors are responsible for disposing of the trash associated with their business and may not use city receptacles for this purpose.

(10) Sidewalk vendors must include any necessary measures needed to prevent and promptly clean up the splatter of fats, greases, or oils on surroundings.

(11) Sidewalk vendors must appropriately dispose of fats, greases, or oils.

(12) At all times while vending, food sidewalk vendors shall possess and display in plain view on the vending device a valid permit from the County of Santa Clara Department of Environmental Health.

(13) At all times while vending, sidewalk vendors shall possess and display in plain view on their person or on their vending device a valid sidewalk vending permit issued pursuant to Section 16B.7. A properly permitted sidewalk vendor must remain on site for all vending activities.

(14) Vending devices 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, trash cans, street signs, trees, or other objects within the public right-of-way. No vending device shall become a permanent fixture on the vending site or be considered an improvement to real property.

(15) Vending devices shall not be left or stored unattended on public property or within the public right-of-way.

(16) Sidewalk vendors shall not vend or distribute: (A) live animals, wildlife, fish, fowl, or insects; or (B) items that are otherwise illegal to sell or distribute under other laws (such as unlawful narcotics, cannabis, weapons, and counterfeit merchandise). Note that the unlawful possession or distribution of items is punishable according to the terms of applicable federal, state, or local law making such possession or distribution illegal.

(17) Sidewalk vendors shall not use sidewalks or public property as storage for extra inventory, merchandise, or personal belongings, except for: (A) vending devices, items placed on or in vending devices, and associated seating; and (B) personal belongings wholly contained underneath or inside of a vending device.

(18) No person shall use any street furniture, including any bench, planter, utility cabinet, or other street furniture or structure permanently installed on public property, for the display, sale, or distribution of food, goods, or merchandise.

(19) Sidewalk vendors shall not interfere with access or use of city infrastructure, including city benches, bike racks, wheelchair access ramps, stairs, parking meters, trash receptacles, or recycling receptacles.

(20) Sidewalk vendors shall not block access to or create unreasonable congestion by maintaining a clear distance of forty-eight inches (48"), unless this conflicts with federal, state, or local regulations, at: (A) a corner of any street intersection; (B) any fire hydrant,

emergency exit, or other emergency facility; (C) any curb which is designated as white, yellow, green, blue, or red zone, or a bus zone; (D) any egress and ingress location of a building, facility, or stairway access point; (E) any driveway or driveway apron; or (F) from any roadway. Vending or operating in a way that violates the accessible path of travel for persons with disabilities is per se unreasonable.

(21) Stationary sidewalk vendors shall not locate their vending device over or within fifteen feet (15') of a storm drain.

(22) Trailers are not permitted on the sidewalk pursuant to California Vehicle Code 22500(f). Violation of this rule is punishable in accordance with the terms of the California Vehicle Code.

(23) Sidewalk vendors shall not connect to city owned utilities such as but not limited to, electric boxes, water lines, and gas lines.

(24) Vendors shall not allow customers in their queue or encourage customers to interfere with or obstruct public rights-of-way, pedestrian pathways, or traffic.

(25) Vendors shall maintain at least five feet or 50% of the overall width of the sidewalk or other pedestrian path, whichever is greater, open to pedestrians.

(26) Vendors may not operate within twenty-five feet (25') of an automatic teller machine (ATM).

(27) At locations where on street parking is angled to the curb, the vending device or area shall be setback three feet (3') from the curb face.

(28) In order to minimize noise impacts on residential units, in mixed use areas, a vendor may only engage in sidewalk vending during the hours of operation of adjacent businesses or uses on the same street.

(29) Sidewalk vendors shall be responsible for their own compliance with all applicable federal, state, and local laws, including without limitation state food preparation, handling, and labeling requirements; fire codes and regulations; noise standards; alcoholic beverages, tobacco products, cannabis, electronic cigarette, smoking devices and controlled substances regulations; sanitation and health standards and the Americans with Disabilities Act and other disability access standards (both state and federal).

(30) Sidewalk vendors shall not operate or vend in a way that violates the terms or conditions of their sidewalk vending permit.

(b) The city administrator or their designee may promulgate regulations governing sidewalk vending to enforce the provisions of this chapter and to address objective health, safety and welfare concerns. A violation of such regulations shall constitute a separate violation of this chapter.

16B.4 RESTRICTED VENDING TIMES AND LOCATIONS.

(a) Unless specifically permitted by another provision of this municipal code, to ensure rapid access by first responder and emergency personnel; to improve sidewalk accessibility for persons with disabilities; to facilitate ingress into and egress from vehicles, rights-of-way, buildings, and public spaces; to maximize use and promote maintenance of public rights-of-way, parks, community landmarks; and to reduce the city's exposure to civil liability, stationary sidewalk vending is not permitted in the following limited areas:

(1) In any city park where the city has entered into an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire;

(2) In areas that are zoned exclusively residential.

(3) Within three hundred feet (300') of a permitted certified farmers' market during the limited operating hours of that certified farmers' market or a special event for which a special event permit has been issued during the hours of that special event. A "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.

(4) Within four hundred feet (400') of a school between the hours of 7:00 am and 4:00 pm on school days.

(5) Within six hundred feet (600') of any entertainment establishment (e.g., clubs) within the hours of 10:00 pm and 2:30 am.

(b) For the same reasons identified in subsection (a), both stationary and roaming sidewalk vending shall not be permitted in the following limited areas:

(1) On a bike path, a street (including within on-street parking spaces), within a driveway, or in a public parking lot.

(c) The city council, by resolution, may from time to time designate no vending or limited vending zones due to objective health, safety, or welfare concerns. In designating a no vending or limited vending zone, the city council shall first determine that vending without limitation in the area would impede or interfere with public health, safety, or welfare.

(d) This section shall not be construed as prohibiting events that are conducted pursuant to, and in accordance with, a Special Event Permit issued by the city.

16B.5 PERMIT APPLICABILITY.

(a) A sidewalk vending permit shall only permit the operation of one vending device at any one time.

(b) No permit granted pursuant to this chapter shall be transferable.

(c) An approved stationary sidewalk vending permit grants the permittee the privilege of occupying a particular portion of the public path or sidewalk for the purpose of conducting the approved vending business. An approved stationary vending permit does not grant the permittee any estate or other property right or interest to operate at the location for which the permit is issued and/or to operate at any location in the public street.

16B.6 SIDEWALK VENDING PERMIT APPLICATION AND FEES.

(a) No person may engage in sidewalk vending in the city without first obtaining: (1) a sidewalk vending permit issued pursuant to Section 16B.7; (2) a business license issued pursuant to Chapter 13 of the Gilroy City Code.

(b) To apply for a sidewalk vending permit, the sidewalk vendor applicant must file an application with the city, accompanied by an application fee in an amount established by resolution of the city council. The application shall be in a form developed by staff and shall contain the following:

(1) The legal name and current address, telephone number, and email address of the applicant, who must be a natural person (i.e., an individual human being and not a corporation, firm, partnership, etc.); a copy of the applicant's California driver's license, California identification card, U.S. Passport, individual taxpayer identification number, federal identification number, or other identification number or card issued by a foreign government;

(2) If sidewalk vending as a representative of a firm, association, or partnership, the name and address thereof and the names and residences of partners or association members. If sidewalk vending as a representative of a corporation, the name and address thereof and the names and residences of officers and a local manager;

(3) A Statement of Operations which includes the type of operation (mobile or stationary), description of the food or merchandise offered for sale, hours of operation, and location of operation;

(4) Copies of all required licenses and permits, including but not limited to a city of Gilroy business license, California seller's permit, and copies of all permits and approvals needed from the County of Santa Clara Department of Environmental Health. Each separate concurrently operating vending location requires its own business license and sidewalk vending permit;

(5) The following release, indemnification, and acknowledgement requirements:

(A) An agreement by the applicant to waive and release the city and its officers, agents, employees, contractors, and volunteers from and against any and all claims, costs, liabilities, expenses, or judgments (including attorneys' fees and court costs) related to or arising out of the applicant's sidewalk vending activities.

(B) An agreement by the applicant to, to the greatest extent allowed by law, defend, indemnify, and hold harmless the city, its officers, agents, employees, contractors, and volunteers from and against any and all claims related to or arising out of the applicant's sidewalk vending activities.

(C) An acknowledgement and agreement that the applicant's use of the sidewalk or other city facilities is at the applicant's own risk, and it is not the city's responsibility to ensure that the vending location is safe or conducive to the vending activities

(6) Photos, dimensions, and a description of the vending device that will be used. If the vending device is mobile, the application shall also contain all applicable vehicle identification information including VIN, make, model and engine number;

(7) An acknowledgement of having read and an agreement to abide by this Chapter 16B (Sidewalk Vending); and

(8) Commercial general liability, automobile, and workers compensation insurance policies and other such policy as the office of the risk manager of the city of Gilroy shall require.

16B.7 SIDEWALK VENDING PERMIT APPROVAL, CONDITIONS, DENIAL, OR REVOCATION.

(a) A sidewalk vending permit shall be approved unless it is determined that:

(1) Information contained in the application, or supplemental information requested from the applicant, is incomplete or false in any material detail; or

(2) The proposed operations are contrary to the provisions and operating standards of this chapter;

(3) The applicant has failed to pay or otherwise resolve any previous administrative citations associated with a previous violation of this chapter; or

(4) The location of the proposed vending operations has already been approved for another use (including potentially other vending operations) at the time the applicant proposes to vend at the subject location; or

(5) The proposed vending operations are in violation of any federal, state or local law or ordinance and/or the city's approval of a sidewalk vending permit would be contrary to legal requirements applicable to the city.

(b) Reasonable sidewalk vending permit conditions, regulating the time, place, and manner of sidewalk vending may be added.

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

(d) A sidewalk vending permit may be revoked for violation of this chapter. A sidewalk vendor whose permit is revoked may apply for a new sidewalk vending permit upon the expiration of the term of the rescinded permit.

(e) An applicant may appeal the decision to deny, revoke, or condition the application to the city administrator within ten (10) business days of the decision. An appeal hearing will be held by the city administrator or their designee within ten (10) business days from the date the appeal is received. At the hearing, both the applicant and the staff member denying the permit shall have the right to appear and to present evidence and arguments relevant to the grounds on which the decision to deny the application is appealed. The burden of proof shall be on the applicant to show that he/she meets the qualifications for a sidewalk vending permit. The decision of the city administrator, or their designee, shall be final and conclusive upon the applicant.

16B.8 SIDEWALK VENDING PERMIT EXPIRATION AND RENEWAL.

A sidewalk vending permit shall be valid for twelve months from the date of issuance, except that a sidewalk vending permit shall be deemed null and void upon the revocation or expiration of: (a) the related city issued business license, (b) a required permit from the County of Santa Clara Department of Environmental Health, and/or (c) the California seller's permit pursuant to Revenue and Taxation Code Section 6067.

16B.9 ADMINISTRATIVE CITATIONS.

(a) Unless otherwise provided, a violation of this chapter by a sidewalk vendor who has a valid sidewalk vending permit from the city is punishable only by an administrative citation pursuant to Chapter 6A, Article II of the Gilroy City 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) Unless otherwise provided, a person engaged in sidewalk vending without a valid city sidewalk vending permit shall be issued an administrative citation pursuant to Chapter 6A, Article II of the Gilroy City Code in amounts not to exceed the following, in lieu of the amounts set forth in subsection (a):

- (1) Two hundred and 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.

(c) A person issued an administrative citation pursuant to subsection (b), upon submitting proof of a valid sidewalk vending permit issued by the city within ten calendar days of the date a citation is issued, may have the amount of their citation reduced to amounts set forth in subsection (a).

(d) Unless otherwise provided, a violation of this chapter shall not be punishable as an infraction or misdemeanor. No person alleged to have violated the provisions herein shall be subject to arrest except when otherwise permitted by law.

(e) If an individual violates this chapter and is issued an administrative citation, that person is required to come into reasonably prompt compliance with this chapter. If a cited individual continues to operate unlawfully and/or fails to come into reasonably prompt compliance with this chapter, the individual may be issued a subsequent administrative citation on the same day, so long as at least one hour has passed between each administrative citation.

(f) In order to facilitate the administration of this chapter, city enforcement staff is authorized to ask sidewalk vendors who are reasonably believed to be vending in violation of this chapter for

their identification card, or other identifying information, and said individuals are required to provide such information to the requesting enforcement staff.

(g) A person who is issued an administrative citation(s) may contest the citation subject to the requirements and procedures of Subsection 6A.16 of the Gilroy City Code. If the contest of the citation is successful, the hearing officer shall order the city to return the fee paid for contesting the citation.

(h) The city shall also provide a person who receives a citation with a notice of their 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 any time before the assessed fine is paid, including while a judgment remains unpaid, when a case is delinquent, or when a fine has been referred to a comprehensive collection program. There shall be no charge for an ability-to-pay determination.

(i) 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 percent of the fee assessed for an administrative citation imposed pursuant to this chapter.

(j) The city may develop processes or regulations that would (1) allow for a person to complete community service in lieu of paying the total administrative fine; (2) provide for waivers of the administrative fine; or (3) provide for the offering of alternative dispositions.

(k) Administrative citations issued under this section shall include the following notice: "You have a right to contest this citation within thirty (30) calendar days by completing a request for hearing form and returning it to the city clerk. If you do not contest the citation, you waive your right to contest it. You also have the right to request an ability-to-pay determination at any time before the assessed fine has been paid."

(l) Failure to pay the assessed fine 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 for failure to pay an administrative citation fine.

(m) No person shall willfully interfere with or obstruct any city code enforcement officer, community services officer, or police officer in their enforcement of the provisions of this chapter. Willful (1) failure to properly identify oneself done for the purpose of attempting to evade an administrative citation, and/or (2) interference with or obstruction of an impoundment authorized pursuant to Section 16B.10 shall constitute unlawful interference or obstruction under this subsection. Violation of this subsection is a misdemeanor.

16B.10 IMPOUNDMENT.

(a) The city may impound vending devices, food, goods, and/or merchandise that:

(1) Reasonably appear to be abandoned on public property; or

(2) Are displayed, offered, or made available for rent or sale by a sidewalk vendor who (A) operates in violation of this chapter; and (B) refuses or fails to provide identification, as required by Section 16B.9 (f); and (C) refuses to remove their vending device, food for sale,

and/or goods/merchandise for sale after being instructed to do so by a city enforcement official; or

(3) Are displayed, offered, or made available for rent or sale by a sidewalk vendor who (A) does not possess a valid applicable sidewalk vending permit; and (B) also refuses to remove their vending device, food for sale, and/or goods/merchandise for sale after being instructed to do so by a city enforcement official; or

(4) Is (A) creating an imminent and substantial safety or environmental hazard by the location of the vending device or the nature of the goods being offered for sale, and (B) refuses to remove their vending device, food for sale, and/or goods/merchandise for sale after being instructed to do so by a city enforcement official; or

(5) Are displayed, offered, or made available for rent or sale by a sidewalk vendor who has, within a twenty-four-month period, been found responsible for violating this chapter four or more times.

(b) The city may immediately dispose of impounded materials that are perishable or cannot be safely stored.

(c) An aggrieved vendor may, within ten days, appeal the impoundment of their property by requesting an administrative hearing before a hearing officer appointed by the city pursuant to Subsection 6A. and if successful in their appeal, may have their property returned without paying an impound fee. The appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedure contained in Chapter 6A., Article II of the Gilroy City Code. Any appeal fee paid by the sidewalk vendor shall be returned to the sidewalk vendor if they are successful on appeal.

(d) An individual may recover impounded materials upon paying applicable impound fees and demonstrating proper proof of ownership.

(e) The city council may by resolution adopt impound fees, which shall reflect the city's enforcement, investigation, storage, and impound costs.

(f) Any unclaimed items will be considered abandoned and forfeited to the city after ninety days following impoundment.