

AN ORDINANCE OF THE CITY OF CHINO HILLS, ADOPTING CHAPTER 5.58 REGULATING SIDEWALK VENDING IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 51036, *ET SEQ.*, AMENDING CHAPTER 5.04 TO REMOVE THE HAWKING PROHIBITION AND ADD ENFORCEMENT OF NO SOLICITATION SIGNS, AMENDING CHAPTER 5.40 TO REMOVE REQUIREMENT THAT SIDEWALK VENDORS OBTAIN ICE CREAM VENDING PERMITS, **ADDING SECTION 5.04.30 REGARDING SOLICITATION** AND DELETING SECTION 10.08.100 TO REMOVE RESTRICTIONS ON FOOD AND VENDOR VEHICLE AND CART PARKING **AND DETERMINING THIS ACTION IS EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHINO HILLS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines as follows:

- A. Government Code §§ 51036, *et seq.* **(SB 946)** became effective on January 1, 2019 and acts to, among other things, decriminalize sidewalk vending.
- B. Amendments to the Chino Hills Municipal Code (“CHMC”) implemented by this Ordinance are necessary to create a Sidewalk Vending Program which will provide licensing regulations of sidewalk vendors in Chino Hills and limit penalties to a specified schedule of fines.

SECTION 2. Factual Findings and Conclusions. The City Council finds that the following facts exist and makes the following conclusions:

- A. Based upon documentary information and code enforcement reporting, many sidewalk vendors in the City engage in public nuisances including, without limitation: impeding traffic on freeway on and offramps and operating in a manner interfering with the normal flow of pedestrian and vehicle traffic.
- B. Street food vending has become an important public health issue and a great concern due to widespread food borne diseases caused, in part, by food vendors who lack an adequate understanding of basic food safety and food-handling requirements. Major sources contributing to microbial contamination are the place of preparation, utensils for cooking and serving, raw materials, time and temperature of cooked foods, and the personal hygiene of vendors (see Food & Drug Administration Employee Health & Personal Hygiene Handbook at <https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/IndustryandRegulatoryAssistanceandTrainingResources/UCM194575.pdf>. Accessed December 17, 2018).

- C. There is a need to regulate the sale of food and merchandise in the public right-of-way to ensure that vendors prepare food safely, and according to the requirements of the Division of Environmental Health Services of the San Bernardino County Department of Public Health; to prevent unsanitary conditions; to ensure trash and debris are removed by vendors; and to safeguard pedestrian movement on the sidewalk.
- D. There is a need to prohibit sidewalk vendors near school drop-off and pick-up zones and carpool lines on both sides of the street to prevent children from running across the street for ice cream and other snacks, to ensure traffic safety when there are long lines of cars, and to ensure the safety of the vendors, school children, and pedestrians.
- E. There is a need to prohibit sidewalk vendor carts on vegetated areas of parks and parkways because placing carts on vegetated parkways and vegetated areas of parks could damage irrigation and vegetation.
- F. Limiting sidewalk and ice cream vendors hours of operation within residential neighborhoods and parks to after 8 am until thirty minutes after sunset is consistent with a residential atmosphere and necessary to protect the safety of sidewalk vendors and residents who would be more vulnerable to criminal activities during evening hours, and to promote the welfare of the residents by prohibiting commercial activities and associated noise and traffic during hours when residents should be able to enjoy peace and quiet.
- G. Requiring sidewalk vendors to provide a means to collect and properly dispose of trash and recycling materials is necessary to protect the health, safety, and welfare of the community by preventing the dispersion of trash, rubbish and unused food products which contribute to blight and attract rodents and other vermin.
- H. Prohibiting sidewalk vendors from clustering in parks and open space by requiring a 100-foot buffer between sidewalk vendors and concessionaires is necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the City's parks and open space.
- I. It is necessary for the public welfare that the City require general liability insurance for sidewalk vendors to ensure that the public is not forced to use public funds to defend itself against litigation resulting from accidents caused by sidewalk vendors' use of the City's sidewalks and parks; such a policy is also consistent with the State Constitution that prohibits unfunded mandates in that SB 946 did not provide any funds to pay for such potential costs when the State Legislature required that local governments make public right of way and parks available to sidewalk vendors.
- J. Ten major intersections within the City have significant vehicular and pedestrian traffic such that it is necessary to protect the public safety by preventing the distraction posed by a sidewalk vendor on the approach to the intersection which could cause a motorist to miss seeing a pedestrian or car at the intersection, so it is necessary to prohibit sidewalk vendors within 50 feet of the curb return of these ten intersections:

- 1 Butterfield Ranch Road and Shady View/SR71 off ramp

- 2 Chino Hills Parkway and Carbon Canyon Road/Rustic Drive
- 3 Chino Hills Parkway and Chino Hills Marketplace
- 4 Chino Hills Parkway and Peyton Drive
- 5 Chino Hills Parkway and Pipeline Avenue
- 6 Chino Hills Parkway and Ramona Avenue
- 7 Grand Avenue and Peyton Drive
- 8 Peyton Drive and Eucalyptus Avenue
- 9 Soquel Canyon Parkway and Pomona Rincon Road
- 10 Soquel Canyon Parkway and Los Serranos Country Club Drive/ Butterfield Ranch Road.

K. Five major intersections within the City have curvature on approach, necessitating that sidewalk vendors remain more than 100 feet from the curb return in order to ensure vehicle and motorist safety given the line of sight concern as shown on the diagram attached to the staff report submitted concurrently with this ordinance:

- 1 Grand Avenue and Boys Republic Drive
- 2 Chino Hills Parkway and Eucalyptus Avenue
- 3 Chino Hills Parkway and Grand Avenue
- 4 Carbon Canyon Road and Canyon Hills Road
- 5 Chino Avenue and Peyton Drive.

SECTION 3. CHMC Chapter 5.58 is added in its entirety as follows:

**“§ 5.58.010 Purpose.**

This Chapter is adopted pursuant to the city’s police powers and Government Code §§ 51036 *et seq.*, including any successor statutes, for the purpose of regulating the sale of food and merchandise in the public right-of-way.

**§ 5.58.020 Definitions.**

Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this Chapter. Words and phrases undefined in this Code have the same meaning as set forth in Sections 51036 and 51039 of the Government Code and Title 3 of the San Bernardino County Code.

- A. “Certified Farmer’s Market” means a California agricultural product point-of-sale location that is registered under, and operated in accordance with, Food and Agriculture Code §§ 47000, *et seq.*
- B. “Charity” has the meaning in Business and Professions Code § 17510.2(d).
- C. “Curb Return” is a curved section of a curb located at a corner of an intersection, connecting a curb on one street to another curb on the intersecting street. A curb return starts at the point where the curb begins to turn toward the direction of the intersecting street and ends at the point where it meets the curb on the intersecting street.
- D. “DEHS” is the San Bernardino County Public Health Department Division of Environmental Health Services.
- E. “Director” means the City Manager, or designee. Unless otherwise provided in writing by the City Manager, the Director is the Assistant City Manager.
- F. “Operate” means to sell food, beverage, or merchandise, to solicit business as a sidewalk vendor or to stop a cart and display wares. “Operate” does not mean to pass through an area without stopping.
- G. “Pedestrian Path” means a publicly-owned footpath, not adjacent to a road, which is intended for use only by pedestrians, wheelchairs and other mobility devices, strollers, or baby carriages.
- H. “Roaming sidewalk vendor” has the meaning set forth in Government Code § 51036, subsection (b), currently defined to mean a sidewalk vendor who moves from place to place and stops only to complete a transaction.
- I. “Sidewalk vendor” has the meaning set forth in Government Code § 51036, subsection (a), currently defined to mean a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.
- J. “School Drop-Off and Pick-Up Areas” – areas designated by City policy or implementing regulation for school drop-off and pick-up including street frontage for carpool line.
- K. “Special Event” means any parade, athletic event, block party, or public assembly that requires partial or complete street or sidewalk closure to vehicular or pedestrian traffic and use of the street or sidewalk for the event, or any event for which a City-issued permit is required for the temporary use of, or encroachment on, the sidewalk or other public area.
- L. “Stationary sidewalk vendor” has the meaning set forth in Government Code § 51036, subsection (c), currently defined to mean a sidewalk vendor who vends from a fixed location.
- M. “Swap Meet” has the meaning in Business and Professions Code § 21661.

### **§ 5.58.030 Sidewalk Permit Requirement.**

- A. Operating as a sidewalk vendor is prohibited without a valid permit issued in accordance with this chapter. Persons must, in addition to obtaining a permit in this chapter, comply with all other provisions of this code.
- B. A bona fide charity is exempt from this chapter and is otherwise regulated pursuant to § 17510, *et seq.* of the Business and Professions Code.
- C. No person or entity shall own, operate, or allow the operation of any activity or facility subject to DEHS jurisdiction, whether permanent or for temporary special events, without first applying for, receiving, and retaining an unexpired, unsuspended, unrevoked DEHS operational permit for each activity or facility, and paying fees to DEHS in those amounts specified in the San Bernardino County Code Schedule of Fees.

### **§ 5.58.040 Applications.**

- A. Sidewalk vendor permit applications must be made on a form approved by the Director and accompanied by all information requested on the application, including:
  - 1. The applicant's full, true name and California Driver's License, California Identification Card number, or individual taxpayer identification number, or a municipal identification number. Identification numbers submitted under this section shall not be made available to the public for inspection, shall be treated as confidential and shall not be disclosed except as required to administer the license or permit program or to comply with a state law or state or federal court order;
  - 2. Proof of a valid California Department of Tax and Fee Administration seller's permit;
  - 3. The name, telephone number, current mailing address, and current photograph of the sidewalk vendor;
  - 4. The name and business address of the principal, if the sidewalk vendor is an agent of an individual, company, partnership, or corporation;
  - 5. A complete description of the food or merchandise offered for sale or exchange;
  - 6. Any applicant who intends to sell food must also provide proof of the required health permit from DEHS, as applicable, pursuant to Health and Safety Code §§ 113700-114437, and certify that the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used has been approved by DEHS for that particular type of food. Each applicant shall furnish accurate names, addresses, and other relevant information reasonably required by DEHS for administration of the San Bernardino County Code. By the signature of the applicant's representative on the application, each applicant consents to periodic unannounced inspection(s) at all reasonable business hours by DEHS Enforcement Officers, and to the collection of evidence, samples,

photographs, examination of invoices, and all other reasonable inspection procedures to determine compliance with all applicable laws enforced by DEHS;

7. The address of the location or proposed route where the sidewalk vendor is proposed to operate;
8. Proof of a valid City of Chino Hills Business License required by Chapter 5.40 or a completed Business License application with the appropriate application fee, unless exempt;
9. A complete description of any ancillary items that the applicant intends to use in conjunction with sales including, without limitation, small tables, trash receptacles, chairs, or other similar items; and
10. A certification by the applicant that to his or her knowledge and belief, the information contained in the application is true.

~~B. B.~~—Each application must be accompanied by an application fee, the amount of which will be set by City Council resolution. Such application fee is solely to reimburse the City for costs incurred as a result of processing a permit application.

~~C.~~  
~~—~~Each application must be accompanied by a certificate of insurance evidencing that the sidewalk vendor has current general liability insurance in the amount of five hundred thousand dollars with coverage related to all activities associated with sidewalk vending activities, with the city named as an additional insured.

~~D. C.~~—Completed applications must be submitted to the Director. Only complete applications will be considered. An application is complete if it includes all required information together with full payment of the application fee. Applications will be considered in the order they are received. The Director may require supplemental information from any applicant before deeming an application complete. If supplemental information is requested, it must be provided to the Director within seven business days of the request.

~~E. D.~~—The Director may reject or deny any or all applications if the information or documentation do not meet the requirements of this chapter. The Director may request and obtain supplemental information from any applicant before making a decision on the application.

~~F. E.~~—Permittees must abide by the operational requirements set forth in this Chapter.

~~G. F.~~—Sidewalk vendors cannot be permitted as a permanent or proprietary location in any property within the City.

~~H. G.~~—The Director's decision with respect to a sidewalk vendor permit application may be appealed to the City Manager pursuant to this title. The City Manager's decision is the City's final decision.

#### **§ 5.58.050 Operating Requirements.**

- A. The sidewalk vending permit is valid for 12 months after being issued unless revoked or suspended, and may be renewed early, before expiration. Sidewalk vending permits are issued to persons, not pushcarts, wagons, or other nonmotorized conveyances. Sidewalk vending permits are nontransferable. Sidewalk vendors shall not be permitted to operate within the city without possessing general liability insurance with coverage in the amount of five hundred thousand dollars related to all activities associated with sidewalk vending activities, with the city named as an additional insured, and shall provide proof of current insurance upon request by a City official. All sidewalk vendors shall comply with the terms and conditions of the sidewalk vendor permit and shall not sell any food or merchandise that was not listed in the sidewalk vendor permit application;
- B. Sidewalk vendors must maintain a clearance of not less than four feet (48-inches) upon every sidewalk or pedestrian path in order to comply with the Americans with Disabilities Act;
- C. Each cart used by a sidewalk vendor must display a valid sidewalk vendor permit decal at all times, which shall be issued by the City, and if a vendor has no cart, then the vendor must display a valid sidewalk vendor permit on his or her person in plain view at all times;
- D. No pushcart, stand, display, pedal-driven cart, wagon, showcase, rack or other nonmotorized conveyance, or ancillary vending items or equipment or umbrellas may be left unattended or chained or fastened to any pole, sign, tree, or other object in the public right of way. Any pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance in violation of this subsection will be confiscated in accordance with constitutional and other applicable law;
- E. Merchandise may not be placed directly onto the public right-of-way without a permit authorizing such placement;
- F. Sidewalk vendors may not operate in School Drop-Off and Pick-Up Areas, between the hours of 6:00 am and 4:00 pm on days such schools are in session;
- G. Sidewalk vendors may not operate within 500 feet of a certified farmer's market or swap meet, except as specifically permitted by the City;
- H. Sidewalk vendors may not offer services or any illegal or counterfeit merchandise, animals, items that will exceed the surface area of sidewalk vending equipment, alcohol, drugs, medicine, chemicals, lottery tickets, weapons, alcohol, fireworks, cannabis or cannabis products, industrial hemp products, adult-oriented material, tobacco, tobacco-related products, or any product used to smoke/vape, or any other items that are deemed unsafe;
- I. Stationary sidewalk vendors may not operate in any of the City's residential zones;
- J. Stationary sidewalk vendors may not operate within any City-owned park with an operative agreement between the City and a concessionaire for the exclusive sale of food or merchandise by the concessionaire, except for pre-approved vendors at City-sponsored events; mobile sidewalk

vendors may not operate within one hundred feet of such a concessionaire, except for pre-approved vendors at City-sponsored events.;

- K. Any stationary sidewalk vendor that stores, prepares, packages, serves, vends, or otherwise provides food must follow all applicable ordinances and regulations and obtain all permits required by DEHS.
- L. No sidewalk vendor shall erect any equipment or object that exceeds nine feet in height, and all temporary structures or objects that are erected must be firmly affixed to a cart or objects with sufficient weight so that they are structurally sound and not subject to toppling over or falling due to weather conditions or not being structurally sound are prohibited in order to avoid injury to pedestrians or vehicles due to falling objects from wind or other causes.
- M. Sidewalk vendors may not operate on public rights of way:

2. Within fifty (50) feet of the curb returns at the intersections listed below:

1 Butterfield Ranch Road and Shady View/SR71 off ramp

2 Chino Hills Parkway and Carbon Canyon Road/Rustic Drive

3 Chino Hills Parkway and Chino Hills Marketplace

4 Chino Hills Parkway and Peyton Drive

5 Chino Hills Parkway and Pipeline Avenue

6 Chino Hills Parkway and Ramona Avenue

7 Grand Avenue and Peyton Drive

8 Peyton Drive and Eucalyptus Avenue

9 Soquel Canyon Parkway and Pomona Rincon Road

10 Soquel Canyon Parkway and Los Serranos Country Club Drive/ Butterfield Ranch Road;

3. Within one hundred (100) feet of the curb returns at the intersections listed below:

1 Grand Avenue and Boys Republic Drive

2 Chino Hills Parkway and Eucalyptus Avenue

3 Chino Hills Parkway and Grand Avenue

4 Carbon Canyon Road and Canyon Hills Road

4.5 Chino Avenue and Peyton Drive; in subsection C.1.b of Section 16.38.043 of this Code;

2.4. Within 5 feet of the outer edge of a driveway or driveway apron;

3.5. Within 5 feet of the outer edge of any alleyway;



- ~~4.6.~~ Within 5 feet of any fire hydrant, fire call box or other emergency facility;
- ~~5.7.~~ Adjacent to any marked loading zone or bus zone;
- ~~6.8.~~ Within a bus shelter in a marked bus zone;
- ~~7.9.~~ Within 18 inches from the edge of the curb;
- ~~8.10.~~ Within 15 feet of a curb return;
- ~~9.11.~~ Where placement impedes the flow of pedestrian traffic by reducing the clear space to less than 4 feet, or impedes egress from, access to or the use of abutting property;
- ~~10.12.~~ Within 25 feet of the entrance or exit to any building;
- ~~11.13.~~ Within 50 feet of a freeway or highway exit or entrance;
- ~~12.14.~~ Within streets, except to cross legally at intersections or crosswalks without stopping;
- ~~13.15.~~ Within center medians or other areas between lanes of traffic;  
or
- ~~14.16.~~ Within areas of the parkway where vegetation and irrigation systems may be damaged.

- N. Sidewalk vendors ~~shall~~ may not operate on City-owned property, including, without limitation, publicly-owned parking lots, except for sidewalks in public right of way, pedestrian paths in City parks and open space ~~(not excluded pursuant to subsection K. above) and paths~~ (, only to the extent as permitted and regulated by this chapter).
- O. Sidewalk vendors shall not operate within a City park:
  - 1. Within 25 feet of an entrance or exit of a building; or
  - 2. Within 5 feet of any fire hydrant, fire call box, or other emergency facility.
- P. Sidewalk vendors shall not place their carts on vegetated areas of parks or public right of way (parkways).
- Q. Sidewalk vendors shall not operate within ~~50~~ 25 feet of City programs, games, and City recreational programs operated outside in the City's parks including any activities permitted pursuant to Athletic Field Use License Agreements, provided that this prohibition shall only be effective for the ~~limited~~ duration of the event.
- R. Sidewalk vendors shall not operate within 100 feet of:

1. ~~1.~~ 4.—An area designated by a Special Event permit issued pursuant to chapter 12.36 of this code for the duration of the event unless specifically permitted as part of the event; and
2. City-sponsored outside events, including but not limited to, parades and concerts, for which the City has entered into exclusive vendor agreements, for the duration of the event, unless vendor has received a permit to vend as part of the event.
3. ~~2.~~ 2.—Outside events in City parks and City facilities such as the Community Center permitted pursuant to rental agreements for events, such as weddings, parties and including, but not limited to, rental of the City's gazebo;

Provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners required by the permit or rental agreement terms are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable.

For moving events, vending shall be prohibited within one hundred feet of the approved event route. For stationary events, vending shall be prohibited within one hundred feet of the parcel boundary for the location of the event.

- S. ~~Restrict s~~ Sidewalk vendors are prohibited from operating in City parks within ~~50~~25 feet of children's playground areas, tennis courts, basketball courts, and marked athletic fields (when such areas, courts or fields are in use).
- T. Sidewalk vendors are prohibited within City open space areas except on designated public pedestrian paths.
- U. ~~In order to prevent obstructions of the public right-of-way, n~~ No sidewalk vendor may set up or allow the use of any equipment or structure, other than a cart, table and shade structure with maximum length combined of eight feet, and maximum width of 4 feet, including a table, crate, carton, or rack, to increase the selling or displace capacity of the cart, unless such items are explicitly allowed in the sidewalk vendor permit obtained by the sidewalk vendor. Any shade structure that extends beyond the edge of the cart/table shall have a minimum clearance height of 80 inches and a maximum height of 9 feet, shall extend no further than 18 inches from the edge of the curb. All equipment, structures, including shade structures, shall not impede the flow of pedestrian traffic by reducing the clear space to less than 4 feet, and shall not impede egress from, access to or the use of abutting property.
- V. ~~In order to preserve sanitary conditions in all public rights-of-way, a~~ All sidewalk vendors shall provide a trash receptacle for customers and must ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash without resorting to existing trash receptacles located on any block for use by the general public.
- W. A sidewalk vendor may not dispose of customer trash in existing trash receptacles on sidewalks, parks, or City facilities.

- X. In order to preserve sanitary conditions in all public rights-of-way, all sidewalk vendors shall maintain a clean and trash-free area within a 10-foot radius around the vendor's cart during hours of operation and shall ensure that such area is clean and trash-free before relocating or closing.
- Y. In order to preserve the safety of vehicular travelers, no sidewalk vendor may solicit business from or conduct business with persons in motor vehicles in such a manner that causes motorists to disrupt or stop the normal movement of traffic or endanger public safety.
- Z. Signs prohibited by Chino Hills Municipal Code Section 16.38.070 for stationary businesses are also prohibited for sidewalk vendors, and strobe lights and spotlights are prohibited.
- AA. In order to prevent obstructions of the public right-of-way, all signage related to the vending operation shall be affixed to the cart, unless pursuant to a permit issued under Section 16.38.043 of this code.
- BB. It is unlawful and subject to punishment in accordance with Section 5.58.080, for any sidewalk vendor to knowingly place or maintain any publication, sign, or other material on or about a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, other nonmotorized conveyance, or one's person which exposes to public view any pictorial matter or other material that is obscene as defined in Section 12.44.020.
- CC. Sidewalk vendors shall not operate in a City park, City open space or any residential zone, listed in Chapter 16.10 of this code, earlier than 8:00 a.m. or later than 30 minutes after sunset.
- DD. Sidewalk vendors shall not operate within 100 feet of another sidewalk vendor or a concessionaire in City parks or open space.
- EE. Sidewalk vendors shall not operate nor cause to be operated any fog or blow horn or similar apparatus.

BB.

#### **§ 5.58.060 Revocation or Suspension of Permit.**

- A. Whenever any person fails to comply with any provision of this Chapter or other applicable law, the Director may give written 10 days' notice to the address stated on a permittee's application specifying the time and place of a permit revocation hearing. If permit violations are shown by substantial evidence, the Director may revoke or suspend any permit. The Director will not issue a new permit after the revocation of a permit unless the Director is satisfied that the applicant will thereafter comply with all provisions of this Chapter and the rules and regulations adopted thereunder and all other applicable provisions of law, and until the Director collects a fee in an amount sufficient to recover the actual costs of processing the re-application.
- B. The Director will provide the permittee with written notice of the revocation by certified mail addressed to the permittee's address.

#### **§ 5.58.070 - Implementing Procedures.**

The City Council is authorized to promulgate the policies, administrative regulations, and procedures to implement this chapter. The City Manager is authorized to adopt additional administrative regulations for the internal management and operation of this chapter.

**§ 5.58.080 - Violations and Penalties.**

- A. Any violation of this chapter constitutes a public nuisance and each day such condition continues is a new and separate offense.
- B. Violations of this chapter are subject to administrative penalties administered pursuant to Chapter 1.18 of this code.
- C. For purposes of this Section, "sidewalk vending program" refers to the provisions of Sections 5.58.050 through 5.58.070, inclusive, and the requirement to obtain a "sidewalk vendor permit" is pursuant to Section 5.58.030.
- D. A violation of any provision in Sections 5.58.050 through 5.58.070, inclusive, may be punished by the following fines:
  - 1. An administrative fine of \$100 for a first violation;
  - 2. An administrative fine of \$200 for a second violation within one year of the first violation; and
  - 3. An administrative fine of \$500 for a third or subsequent violation within one year of the first violation.
  - 4. The Director may revoke the sidewalk vendor permit issued upon a fourth or subsequent violation.
- E. Vending without a sidewalk vendor permit may be punished by an administrative citation pursuant to chapter 1.18 the following:
  - 1. An administrative fine not exceeding \$250 for a first violation.
  - 2. An administrative fine not exceeding \$500 for a second violation within one year of the first violation.
  - 3. An administrative fine not exceeding \$1,000 for each additional violation within one year of the first violation.
  - 4. Upon proof of a valid permit, an administrative fine imposed under Section 5.58.080(E) shall be reduced to the respective administrative fine set forth in Section 5.85.080(D).
  - 4.5. If an enforcement officer issues an administrative citation because the citee lacks a sidewalk vendor permit required by this code, and the fine is delinquent and the vendor has not made an alternative arrangement pursuant to subsection F. below, the city will not issue the permit until the delinquent fine, and any applicable penalties and interest, is paid, or, if an alternative arrangement is made pursuant to subsection F. below, 20% of the administrative fine is remitted, or other alternative arrangement provided under subsection F. below has been satisfied.

- F. When assessing an administrative fine, the Director or designee must take into consideration the violator's ability to pay the fine. In doing so, the Director may allow the violator to complete community service in lieu of paying the total administrative fine, waive the fine, or offer an alternative disposition. If either of the following are true, the violator may remit to the City 20% of the administrative fine imposed:
  - 1. The violator is receiving public benefits under one or more of the following programs: (i) Supplemental Security Income (SSI) and State Supplementary Payment (SSP); (ii) California Work Opportunity and Responsibility to Kids Act (CalWORKs) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program; (iii) Supplemental Nutrition Assistance Program or the California Food Assistance Program; (iv) County Relief, General Relief (GR), or General Assistance (GA); (v) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants; (vi) In-Home Supportive Services (IHSS); or (vii) Medi-Cal; or
  - 2. The violator's monthly income is 125 percent or less of the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).
- G. Any fine required to be paid under the provisions of this chapter is a debt owed by the vendor to the City. Any person owing money to the City is liable to an action brought in the name of the City for the recovery of such amount.
- H. Notwithstanding any other provision of this code, neither a violation of the sidewalk vending program nor a failure to pay an administrative fine imposed by Section 5.58.080 (D) or (E) shall be punishable as an infraction or misdemeanor.
- I. Nothing in the chapter shall be construed to limit the City's ability to enforce laws of general applicability against sidewalk vendors, or to take any other enforcement actions against sidewalk vendors, that are allowed by state or federal law or this code."

SECTION 4. The definition for "Hawking" in CHMC § 5.04.010 is deleted and the entirety of CHMC § 5.04.310 is deleted.

SECTION 5. CHMC Chapter 5.40 is amended in its entirety to read as follows:

**§ 5.40.010 - Definitions.**

For purposes of this chapter, the words and phrases set forth below shall have the following meanings:

"Ice cream vending business" means a business consisting of sales from a motor vehicle upon a City street to the public of ice cream bars, popsicles, paletas, and similar frozen food items and which items make up the majority of the sales or inventory of the business.

"Ice cream vendor" means a person who conducts sales to the public for an ice cream vending business, excluding sidewalk vendors as defined in section 5.58.020 of this code.

"Owner" means a person who owns an ice cream vending business and who regularly visits or works at the business when sales are made. If the business is owned by a corporation or partnership, the owner also includes every director, officer, controlling shareholder, and partner who regularly visits or works at the business when sales are made.

"Specified criminal act" includes those crimes defined in the following sections: Penal Code Sections 207, 220, 261, 266, 267, 272, 273(a), 286(c), 288, 288(a) (c), and 313.1, Health and Safety Code Sections 11353, 11353.5, 11361, and 11380, and any crimes requiring registration under Penal Code Sections 290. Specified criminal act also includes crimes in other states or jurisdictions that would be offenses under the preceding sections if committed in the state of California.

#### **§ 5.40.020 - Ice Cream Vending Permit Required.**

It is unlawful and a misdemeanor subject to punishment in accordance with Section 1.36.010 et seq. of this code for any person to vend, sell, or operate as an ice cream vendor, except for sidewalk vendors of ice cream, without having a valid ice cream vendor permit issued by the City. Each applicant for an ice cream vendor permit shall pay a fee as set by resolution of the City Council.

#### **§ 5.40.030 - Application Permit—Contents.**

Applicants for an ice cream vendor permit shall follow the application process contained in Section 5.32.040 of this code.

#### **§ 5.40.040 - Referral for Investigation—Permit Issuance.**

Applications for an ice cream vendor permit shall be referred for an investigation and permits shall be issued or denied as set forth in Section 5.32.050 of this code.

#### **§ 5.40.050 - Expiration or Renewal of Permit.**

An ice cream vendor permit shall expire and be renewable in accordance with Section 5.32.060 of this code.

#### **§ 5.40.060 - Revocation of Permit.**

A permit issued under this chapter may be revoked in accordance with the procedures outlined in Sections 5.32.070 to 5.32.090 of this code.

#### **§ 5.40.070 - Transfer of Permit.**

No permit issued under this chapter shall be transferred to another person or entity nor shall there be an attempt to make such a transfer. The regulations regarding the transfer of a permit set forth in Section 5.32.100 of this code shall apply to the transfer or attempted transfer of a permit issued under this chapter.

#### **§ 5.40.080 - Injunction.**

A person who operates or causes to be operated an ice cream vending business or who operates as an ice cream vendor without a valid permit issued therefor from the City is subject to a suit for an injunction, prosecution for criminal violation, and any other remedy to which the City may be entitled at-law or in equity.

#### **§ 5.40.090 - Violation and Penalty.**

It is unlawful and a misdemeanor for any person to violate any provision of this chapter, and shall subject the violator to punishment in accordance with Section 1.36.010 et seq. of this code.

#### **§ 5.40.100 - Application to Existing Ice Cream Vending Businesses.**

Any existing business, vendor, or operator who is denied a permit may request an administrative hearing pursuant to Section 5.32.080 of this code to seek an extension from the City Manager or designee, for up to one year based on grounds of economic hardship. The extension may be granted if adequate conditions may be imposed to achieve the objectives of this chapter.

#### **§ 5.40.110 - General Procedural Specifications.**

The provisions of Chapter 5.32 that are adopted in this Chapter 5.40 (pursuant to Sections 5.40.030 through 5.40.070) for regulating ice cream vending businesses shall be only those provisions in Chapter 5.32 that may practically be applied to mobile businesses. For purposes of this chapter, the places where an ice cream vending business does business and conducts sales are the various locations wherever the vehicle(s), stop to make sales to the public.

#### **§ 5.40.120 – Time Restrictions.**

In order to preserve the peace, safety, and tranquility of residential neighborhoods, ice cream vendors shall not operate in a City park, City open space or any residential zone, listed in Chapter 16.10 of this code, earlier than 8:00 a.m. or later than 30 minutes after sunset.

SECTION 6. CHMC § 5.04.340 is added as follows:

“Unless previously and expressly invited to enter onto the premises, it is unlawful for any person to enter onto private property that is posted with an unobstructed sign or placard open to public view which prohibits soliciting.”

SECTION 7. CHMC §10.08.100 is deleted.

SECTION 8. Environmental Assessment. This ordinance is exempt from additional environmental review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, “CEQA”) and CEQA regulations (14 California Code of Regulations §§ 15000, *et seq.*) because it consists only of minor revisions and clarifications to existing regulations and specification of procedures related thereto. This ordinance, therefore, does not have the potential to cause significant effects on the environment. Consequently, it is exempt from CEQA review under 14 Cal. Code Regs. § 15061(b)(3).

SECTION 9. Reliance on Record. Each and every one of the findings and determinations in this Ordinance are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 10. Limitations. The City Council's analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the City Council's lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions. Somewhat related to this are limitations on the City's ability to solve what are in effect regional, state, and National problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.

SECTION 11. Preservation. Repeal or amendment of any previous CHMC section or ordinance does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 12. Severability. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provision or application and, to this end, the provisions of this Ordinance are severable.

SECTION 13. Interpretation. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council's intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 14. Effect of Repeal. Repeal of any provision of the CHMC does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 15. Effect of Invalidation. If this entire Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal or amendment of the Chino Hills Municipal Code or other city ordinance by this Ordinance will be rendered void and cause such previous Chino Hills Municipal Code provisions or other city ordinances to remain in full force and effect for all purposes,

SECTION 16. Certification. The City Clerk, or her duly appointed deputy, is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Chino Hills's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.



SECTION 17. Effective Date. This Ordinance will become effective 30 days following its final passage and adoption.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
BRIAN JOHSZ, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA                    )  
COUNTY OF SAN BERNARDINO        )        ss  
CITY OF CHINO HILLS                    )

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that Ordinance No. \_\_\_\_ was duly introduced at a regular meeting held \_\_\_\_\_, 2021; and adopted at a regular meeting of the City Council held on \_\_\_\_\_, 2021 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

I, CHERYL BALZ, City Clerk of the City of Chino Hills further certify that summaries of the Ordinance were published on \_\_\_\_\_, 2021 and \_\_\_\_\_, 2021 in the Chino Hills Champion newspaper.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Chino Hills, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
CHERYL BALZ, CITY CLERK