

**ORDINANCE NO. 378**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALIMESA, CALIFORNIA, AMENDING TITLE 5 OF THE CALIMESA MUNICIPAL CODE REGARDING A SIDEWALK VENDING PROGRAM**

**WHEREAS**, Senate Bill ("SB") 946 was signed into law on September 17, 2018, and became effective January 1, 2019;

**WHEREAS**, SB 946 limits the authority of cities and counties to regulate sidewalk vendors, except in accordance with California Government Code Sections 51038 and 51039;

**WHEREAS**, the City of Calimesa Municipal Code currently prohibits sidewalk vending, in conflict with SB 946;

**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, and within public parking lots and structures, 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 is 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; and

**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.

**THE CITY COUNCIL OF THE CITY OF CALIMESA DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The defined term "solicitor" is hereby deleted from Section 5.05.010 ("Definitions") of Chapter 5.05 ("Licenses") of Title 5 ("Business Licenses and Regulations") of the Calimesa Municipal Code.

**SECTION 2.** A new Subsection (C) is hereby added to Section 5.05.140 ("How and When License Taxes Payable") of Chapter 5.05 ("Licenses") of Title 5 ("Business Licenses and Regulations") of the Calimesa Municipal Code to read as follows:

"C. Nonprofit entities shall be exempt from fees with current and valid 501(c)(3) documentation."

**SECTION 3.** Subdivision (A) of Section 5.10.010 ("Transient merchants and temporary businesses prohibited") of Chapter 5.10 ("Transient Merchants and Temporary Businesses") of Title 5 ("Business Licenses and Regulations") of the Calimesa Municipal Code is hereby amended to read as follows:

"A. It shall be unlawful for any person to sell merchandise, motor vehicles, trailers, foodstuffs, stuffed animals, fruits, vegetables, flowers, medicine, eggs, furniture, bakery goods, or similar items from a temporary stand or other temporary location upon any public street, alley or other public place, doorway of any room or building, unenclosed building, or vacant lot or parcel of land, either paved or unpaved. This section does not apply to businesses with licenses issued pursuant to Chapter 5.05 CMC or to those garage sales which may be exempt pursuant to CMC 5.05.050, or to sidewalk vendors regulated pursuant to Chapter 5.35."

**SECTION 4.** Chapter 5.35 ("Sidewalk Vending") is hereby added to Title 5 ("Business Licenses and Regulations") of the Calimesa Municipal Code is to read as follows:

**“Chapter 5.35  
SIDEWALK VENDING**

Sections:

- 5.35.010 Definitions.**
- 5.35.020 Permit required.**
- 5.35.030 Permit application.**
- 5.35.040 Criteria for approval or denial of permit.**
- 5.35.050 Permit expiration and renewal.**
- 5.35.060 Permit rescission.**
- 5.35.070 Appeals.**
- 5.35.080 Permits nontransferable.**
- 5.35.090 Operating requirements.**
- 5.35.100 Administrative citations.**

**5.35.010 Definitions.**

The following words and phrases, whenever used in this chapter, 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 Director of Planning of the City of Calimesa.

“Person” shall mean one or more natural persons, 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 vends from a vending cart or from one’s person, upon a public sidewalk, parkway, pedestrian path, or other public right-of-way available to pedestrians. “Sidewalk vendor” does not include a person who vends from a bicycle, scooter, or other vehicle or motorized device of any kind, whether fixed or stationary.

“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, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts.

“Vend” or “vending” means to sell, offer for sale, display for sale, or solicit offers to purchase, food, food products, beverages, goods, or merchandise.

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

#### **5.35.020 Permit required.**

No person, either for themselves or any other person, shall conduct or engage in sidewalk vending within the city without first obtaining a sidewalk vending permit pursuant to this chapter.

#### **5.35.030 Permit application.**

A. To apply for a sidewalk vending permit, a person must file an application with the Director, accompanied by a nonrefundable processing fee in an amount established by resolution of the city council. The application shall be in a form prescribed by the Director and shall contain, at a minimum, the following:

1. The legal name and current address and telephone number of the applicant;
2. If the applicant is an agent of an individual, company, partnership, corporation, or other entity, the name and business address of the principal;
3. A description of the food or merchandise offered for sale;
4. Whether the applicant intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor;
5. A copy of a valid business license issued pursuant to Chapter 5.05 CMC;
6. A California seller’s permit number pursuant to Section 6067 of the Revenue and Taxation Code, for a permit with a term that extends through the life of the sidewalk vending permit;
7. Certification by the applicant that the information contained in the application is true to his or her knowledge and belief;

8. If a vendor of food or food products, certification to completion of a food handler course and proof of all required approvals from the Riverside County Department of Environmental Health; and

9. Any other reasonable information regarding the time, place, and manner of the proposed vending.

**5.35.040 Criteria for approval or denial of permit.**

A. The Director, or his or her designee, shall approve the issuance of a permit unless he or she determines that:

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

2. The applicant has failed to provide a complete application, after having been notified of the requirement to produce additional information or documents; or

3. The applicant has failed to demonstrate an ability to conform to the operating standards set forth in CMC 5.35.090.

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

**5.35.050 Permit expiration and renewal.**

Each sidewalk vending permit shall expire at 11:59 p.m. on December 31 in the year in which the city issued the permit. 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.

**5.35.060 Permit rescission.**

The Director may rescind a permit issued to a sidewalk vendor for a fourth violation or subsequent violation of this chapter. 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.

**5.35.070 Appeals.**

Any person aggrieved by the decision of the Director to issue, deny issuance, or rescind a sidewalk vending permit may appeal the decision to the city council. The appeal shall be filed with the city clerk within 15 days following the date of the Director's decision.

**5.35.080 Permits nontransferable.**

No permit granted pursuant to this chapter shall be transferable.

**5.35.090 Operating requirements.**

A. Sidewalk vendors shall comply with the following:

1. No sidewalk vendor shall vend in the following locations:
  - a. Within 15 feet of any street intersection;
  - b. Within 10 feet of any fire hydrant, fire call box, or other emergency facility;
  - c. Within 10 feet of any driveway or driveway apron;
  - d. Upon or within any roadway, median strip, or dividing section;
  - e. Within 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 farmers' market or swap meet, or the limited duration of the temporary special permit;
  - f. Within public parking lots or public parking structures; or
  - g. Upon landscaped areas.
2. No sidewalk vendor shall vend in a manner that blocks or obstructs the free movement of pedestrians or vehicles. Sidewalk vendors must at all times provide a clearance of not less than 3 feet on all sidewalks or pedestrian areas so as to enable persons to freely pass while walking, running, or using mobility assistance devices.
3. Sidewalk vending is permitted between the hours of 8:00 a.m. and 10:00 p.m., daily, except as follows:
  - a. In residential areas, sidewalk vending shall be permitted between the hours of 8:00 a.m. and sunset.
  - b. In nonresidential areas, the limit on hours of operation shall not be more restrictive than the hours of operation of other businesses or uses on the same street.
4. Stationary sidewalk vendors shall not vend in areas that are zoned exclusively residential.
5. Stationary sidewalk vendors shall not vend food or merchandise at any park where the City has signed an agreement for concessions that exclusively permits the sale of such food or merchandise by a concessionaire.
6. Sidewalk vendors shall provide a trash receptacle for customers and 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 or the vendor's customers within a 15-foot radius of the vending location.

7. Vendors of food or food products shall possess and display in plain view on the vending cart a valid Mobile Food Facility permit from Riverside County Department of Environmental Health.

8. Sidewalk vendors shall possess at all times while vending a valid permit issued pursuant to this chapter, as well as any other permit or license required by the city and any other appropriate governmental agency.

9. Sidewalk vendors shall comply with all applicable state and local laws, including, without limitation, state food preparation, handling, and labeling requirements; fire codes and regulations; noise standards; and the Americans with Disabilities Act of 1990 and other disability access standards (both state and federal).

10. No vending cart shall become a permanent fixture on the vending site or be considered an improvement to real property.

**5.35.100 Administrative citations.**

A. 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 1.30 CMC in amounts not to exceed the following:

1. \$100.00 for a first violation.
2. \$200.00 for a second violation within one year of the first violation.
3. \$500.00 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 1.30 CMC in amounts not to exceed the following, in lieu of the amounts set forth in subsection (A):

1. \$250.00 for a first violation.
2. \$500.00 for a second violation within one year of the first violation.
3. \$1,000.00 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 subsection shall be reduced to amounts set forth in subsection (A).

C. 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.

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, 20 percent of an administrative citation imposed pursuant to this chapter.

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 5.** California Environmental Quality Act. The City Council finds and determines that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. Accordingly, this Ordinance is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15378 of Division 6 of Title 14 of the California Code of Regulations.

**SECTION 6.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance 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 adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

**SECTION 7.** Effective Date; Publication. This Ordinance shall take effect thirty (30) days after its final passage, and within fifteen (15) days after its passage, the City Clerk shall cause this Ordinance or a summary hereof to be published and or posted as required by law and by the City's ordinances and resolutions.

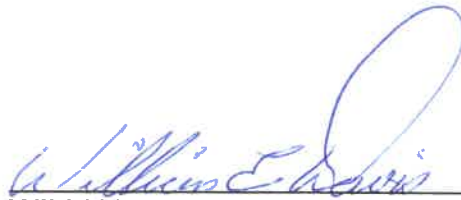
**INTRODUCED AND APPROVED UPON FIRST READING** this 7<sup>th</sup> day of June, 2021, upon the following vote:



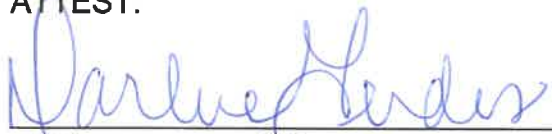
AYES: Cervantez, Davis, Duvall, Hewitt and Molina  
NOES: None  
ABSENT: None  
ABSTAIN: None

**PASSED, APPROVED AND ADOPTED UPON SECOND READING** this 21<sup>st</sup>  
day of June, 2021, upon the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

  
\_\_\_\_\_  
WILLIAM DAVIS, MAYOR

ATTEST:

  
\_\_\_\_\_  
DARLENE GERDES, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
QUINN M. BARROW, CITY ATTORNEY

STATE OF CALIFORNIA        }  
COUNTY OF RIVERSIDE     }  
CITY OF CALIMESA         } SS.

I, **DARLENE GERDES**, City Clerk of the City of Calimesa, California, DO HEREBY CERTIFY, that the aforementioned is a true and correct copy of **Ordinance No. 378** known as:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALIMESA, CALIFORNIA, AMENDING TITLE 5 OF THE CALIMESA MUNICIPAL CODE REGARDING A SIDEWALK VENDING PROGRAM**

And which is on file in the Office of the City Clerk, City of Calimesa California.

Said Ordinance was adopted by the said City Council at a regular meeting thereof held on the 21<sup>st</sup> day of June 2021 by the following vote:

AYES:           Cervantez, Davis Duvall, Hewitt and Molina  
NOES:           None  
ABSENT:        None  
ABSTAINED:   None



*Darlene Gerdes*  
\_\_\_\_\_  
DARLENE GERDES, CITY CLERK

Dated this 23<sup>rd</sup> day of June 2021.