



Town Council Agenda Report

Date: October 27, 2020 Item No. 2

To: Honorable Mayor and Town Council

Subject: SECOND READING OF ORDINANCE 537 OF THE TOWN OF APPLE VALLEY, CALIFORNIA, ADDING CHAPTER 5.08 TO THE TOWN OF APPLE VALLEY MUNICIPAL CODE, IMPOSING REGULATIONS ON SIDEWALK VENDING IN COMPLIANCE WITH SENATE BILL 946.

From: Douglas Robertson, Town Manager

Submitted by: Guy Eisenbrey, Code Enforcement Manager
Code Enforcement

Budgeted Item: Yes No N/A

RECOMMENDED ACTION

Adopt Ordinance No. 537

BACKGROUND

At its October 13, 2020 meeting, the Town Council reviewed and introduced Ordinance No. 537 that adds Chapter 5.08 to the Town of Apple Valley Municipal Code, imposing regulations on sidewalk vending in compliance with Senate Bill 946. Ordinance No. 537 has been scheduled for adoption at the October 27, 2020 Town Council Meeting.

FISCAL IMPACT

Not Applicable

ATTACHMENTS

Ordinance No. 537

ORDINANCE 537

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING SECTIONS 5.02.010 AND 5.02.260 OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE AND ADDING CHAPTER 5.08 TO THE TOWN OF APPLE VALLEY MUNICIPAL CODE, IMPOSING REGULATIONS ON SIDEWALK VENDING IN COMPLIANCE WITH SENATE BILL 946

WHEREAS, the Town of Apple Valley, California (“Town”) is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the police powers delegated to it by the California Constitution, the Town has the authority to enact laws which promote the public health, safety, and general welfare of its citizens, including sidewalk vending, as long as these are consistent with SB 946; and

WHEREAS, in 2018, the California Legislature passed SB 946 which prohibits cities from regulating sidewalk vendors, except in accordance with the provisions of SB 946; and

WHEREAS, SB 946 applies to both charter and general law cities; and

WHEREAS, SB 946 authorizes the implementation of regulations that are directly related to objective health, safety, or welfare concerns, and that do not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified; and

WHEREAS, the permit requirements proposed are consistent with SB 946, as they are reasonable, related to objective health, safety, and welfare concerns, and are based upon compliance with other generally applicable laws including the Americans with Disabilities Act; and

WHEREAS, the standards imposed on stationary and roaming sidewalk vendors requiring a minimum path of accessible travel are necessary to comply with the Americans with Disabilities Act and maintain minimum safe access along public sidewalks; and

WHEREAS, standards for maintaining access to building entrances, and not blocking driveways, fire hydrants, parking areas and building storefront windows are necessary to guard the health and safety of patrons, drivers, vendors and existing business owners and promote fire suppression and law enforcement practices that allow the Town’s and Apple Valley Fire Protection District’s safety personnel to observe activities within buildings and maintain access; and

WHEREAS, the Town Council finds and determines that the installation, repair, maintenance, and removal of encroachments in the public way must be regulated in order to protect the public health, safety, and welfare and to provide for the orderly

administration and maintenance of the public access ways for the benefit of the community, while at the same time allowing reasonable accommodation and cooperative flexibility for providing necessary utility and other convenience services to the community; and

WHEREAS, the Town Council finds that public and private persons who maintain and/or install encroachments in the public way bear a responsibility to help preserve the public way and to contribute to the administrative and liability costs incurred by the community and caused by such encroachments; and

WHEREAS, the Town Council finds that, unless properly regulated, sidewalk vending poses a unique risk to the health, safety, and welfare of the public, including, but not limited to, impacts to traffic, pedestrian safety, mobility, unsanitary conditions involving food preparation, risks to children, and consumer protection; and

WHEREAS, the inherent nature of sidewalk vending and the ability of such vendors to be located on private property and public streets and move quickly from place to place in the community, including near parks, schools, and other places frequented by children, warrants imposing certain regulatory measures, including requiring background checks, to protect the health, safety, and welfare of the community; and

WHEREAS, SB 946 continues to authorize cities to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a Use Permit issued by a city; and

WHEREAS, fraud or misrepresentation in the course of vending constitutes an objective harm to the health, safety, and welfare of the Town's residents; and

WHEREAS, vending in a manner that creates a public nuisance or constitutes a danger to the public constitutes an objective harm to the health, safety, and welfare of the Town's residents.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Ordinance as if fully set forth herein.

SECTION 2. Subsection (g) of Section 5.02.010 of the Town of Apple Valley Municipal Code is hereby amended in its entirety to read as follows:

"(g) Solicitor means hawker, or other person who, without appointment, goes from house to house, place to place, or in or along the streets of the Town selling and making immediate delivery, or offering for sale and immediate delivery, any goods, wares, merchandise, or anything of value excluding mobile food facilities (MFFs). Such definition shall not include any person who sells, offers to sell, operates, engages in, or carries on a food or merchandise vending business from a pushcart, stand, display,

pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk, property, or other pedestrian path in compliance with Chapter 5.08 of Title 5 of this Municipal Code."

SECTION 3. Section 5.02.260 of the Town of Apple Valley Municipal Code is hereby amended in its entirety to read as follows:

"5.02.260 – The business of peddling, or hawking, is prohibited, and a business license shall not be issued therefore. Businesses that have a valid Town business license may solicit orders for later delivery. This prohibition shall not be applicable to any person who sells, offers to sell, operates, engages in, or carries on a food or merchandise vending business from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk, property, or other pedestrian path in compliance with Chapter 5.08 of Title 5 of this Municipal Code."

SECTION 4. Chapter 5.08 is hereby added to the Town of Apple Valley Municipal Code to read as follows:

"Chapter 5.08 – SIDEWALK VENDING.

Section 5.08.010 Purpose.

The Town finds that the vending of prepared or pre-packaged foods, goods, and/or wares at semi-permanent locations or upon public sidewalks and rights-of-ways may cause unsafe conditions and special dangers to the public health, safety, and welfare of Town residents and visitors. The purpose of this Chapter is to implement reasonable regulations on both roaming and stationary sidewalk vending meant to protect the public health, safety, and welfare of the community while complying with the requirements of general state law, as amended from time to time, to promote safe vending practices, prevent safety, traffic, and health hazards, and preserve the public peace, safety, and welfare of the community.

Section 5.08.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- 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.
- B. "Park" means a public park owned by the Town.
- C. "Roaming sidewalk vendor or vending" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.
- D. "Use Permit" means a permit issued by the Town of Apple Valley for an outdoor activity or gathering.

- E. "Sidewalk vendor or vending" means a person who sells, offers to sell, operates, engages in, or carries on a food or merchandise vending business 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.
- F. "Stationary Sidewalk vendor or vending" means a sidewalk vendor who vends from a fixed location.
- G. "Swap Meet" means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.
- H. "Town" means the Town of Apple Valley.

Section 5.08.030 Permits Required.

- A. All sidewalk vendors shall obtain a sidewalk vending permit from the Town's Business License Department and a business tax certificate prior to engaging in any sidewalk vending activities. The following information shall be required:
 - 1. Name, current mailing address, and phone number of the vendor; and if the vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal;
 - 2. A description of the merchandise/goods to be offered for sale or exchange, and the days/hours of sales;
 - 3. A copy of the California seller's permit with the sales tax number issued by the California Department of Tax and Fee Administration to the vendor;
 - 4. A copy of the vendor's social security card with the number, valid California Driver's license or identification card, or the individual taxpayer identification number issued to the vendor. Any such identification number or license collected shall not be made available to the public for inspection and shall remain confidential and not be disclosed except as required to administer the permit or licensure program or to comply with a state law or state or federal court order;
 - 5. A copy of the County Health Department permit issued to the vendor if preparing food;
 - 6. If the vendor proposes to be a stationary sidewalk vendor, a description or site plan map of the proposed location(s) where vending will take place, showing that the sidewalk location maintains a minimum of thirty-six inches (36") of accessible route area, in compliance with the Americans with Disabilities Act; and if the proposed location is on private property, a copy of written authorization from the property owner;
 - 7. A copy of general liability policy naming the City as additional insured in the amount of \$1,000,000; and

8. A certification signed by the vendor declaring the information contained in the application is true and accurate to the best of their knowledge and belief.
- B. Prior to the issuance of a sidewalk vendor permit, the applicant shall cause to be filed with the Chief of Police, or Sheriff Department's Station Captain, or their designee a LiveScan background check conducted by the California Department of Justice within the previous six (6) months of the application date. The Chief of Police, or Sheriff Department's Station Captain, shall furnish each applicant with a LiveScan request form for use at any LiveScan vendor location.
- C. At the time of initial application or application for renewal is filed, the applicant shall pay the permit processing fee established by separate resolution of the Town Council.

Section 5.80.040 Review of Permit Application; Decision.

- A. Upon acceptance of a properly completed and filed sidewalk vendor permit application and receipt of an acceptable LiveScan report issued by the Department of Justice, the Director of Finance or their designee shall make a determination within thirty (30) days of acceptance to approve or deny the application. Issuance of a permit may be denied for any of the following reasons:
 1. The applicant has failed to pay the application permit fee;
 2. The applicant has made one or more material misstatements in the application for a permit;
 3. The applicant does not have a valid social security card or valid California Driver's license; or valid individual taxpayer identification number;
 4. The applicant's vending operation, as described in the application, is inconsistent with the standards, conditions, and requirements of this Chapter;
 5. It is determined that the applicant does not possess all federal, state, county, and local permits and licenses necessary to engage in the activity in which they seek to engage;
 6. After conducting a preliminary investigation to determine compliance with this Chapter, the Chief of Police, or Sheriff Department's Station Captain, finds any of the following as a result of the LiveScan background check, including but not limited to the following:
 - (a) A conviction in a court of competent jurisdiction or a plea of nolo contendere to any felony offense involving the sale of a controlled substance specified in California Health and Safety Code sections 11054, 11055, 11056, 11057, or 11058 within three (3) years of the date of application; or
 - (b) Active probation or parole status for any offenses set forth in this Chapter or section for an offense that was committed within three (3) years of the date of application.

- B. If the application is denied, the reasons for disapproval shall be noted on the application and the applicant shall be notified that their application is denied and that no permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form.
- C. If the Director of Finance or their designee approves the applicant's permit, they shall endorse their approval on the application and shall, upon payment of the prescribed fee, deliver the permit to the applicant.
- D. Exemptions. A sidewalk vending permit shall not be required for the following activities:
 - 1. The sale of agricultural products on the site where the product is grown;
 - 2. Catering for private parties held exclusively on private property and not open to the general public;
 - 3. Events permitted pursuant to a lawfully issued Use Permit including but not limited to a Certified Farmers' Market, Swap Meet, street fairs, outdoor concerts, sports league opening days, and commercial business sidewalk sales; and
 - 4. First Amendment protected vending.
- E. Term of permit. A sidewalk vending permit issued pursuant to this Chapter shall automatically expire one (1) year from the date issued and concurrent with the applicant's business license.
- F. Transferability. A sidewalk vending permit shall not be transferable to any other entity or person and is valid only for the term stated.

Section 5.08.050 Standards Applicable to All Sidewalk Vendors.

- A. All sidewalk vendors in the Town of Apple Valley shall comply with the following:
 - 1. Display of Permit. All permits and licenses associated with the sidewalk vendor shall be prominently displayed upon the cart at all times while the vendor is operating;
 - 2. A litter receptacle shall be made available if food or beverages are sold for immediate consumption;
 - 3. The sidewalk vendor shall leave a minimum of thirty-six inches (36") of accessible path of travel, without obstruction, along the public sidewalk or public pathway;
 - 4. No vending cart shall exceed four feet (4') in width, eight feet (8') in height, or eight feet (8') in length;
 - 5. The sidewalk vendor shall maintain the immediate area in a clean, orderly, and sanitary condition; and

6. Compressors, auxiliary engines, generators, batteries, battery chargers, gas-fueled water heaters, and similar equipment shall be installed and permanently affixed to the vending cart, hidden from view to the extent possible, and easily accessible. Any noise generated by such equipment shall comply with the Town of Apple Valley Development Code Chapter 9.73.
- B. The following conditions or acts are unlawful and hereby declared to be a public nuisance:
1. Leaving a cart or display unattended. Carts or displays left unattended are subject to immediate impound and storage;
 2. Use of privately or publicly owned trash receptacles not owned by the permittee;
 3. Discharge of solids or liquids onto the street or into a storm drain;
 4. Soliciting to or conducting business with persons inside of motor vehicles;
 5. Vending items or consumables that are not listed on the permittee's application or that the vendor is not permitted to sell;
 6. Blocking entrances to private buildings, private driveways, parking spaces or building windows;
 7. Vending within ten (10) feet of a fire hydrant, fire escape, bus stop, loading zone, handicapped parking space or access ramp, fire station driveway, or police station driveway;
 8. Vending within one thousand feet (1,000') of any school property boundary while children are going to or leaving such school at pickup or drop off times, or during the noon hour or lunch time recess periods;
 9. Placement of tables, chairs, fences, shade structures, other site furniture, or any freestanding signs;
 10. Use of any water lines, electrical lines, or gas lines not owned by the permittee;
 11. Excessive external storage or display of refuse, equipment, materials, goods, wares, or merchandise;
 12. Vending from the exposed street, alley, or traffic side of the vending cart;
 13. Vending within five hundred feet (500') of an event held pursuant to a Use Permit;
 14. Prohibited Signs. No signs are allowed, except those affixed to the vending cart and approved in the application which identify the name of the product or the name of the vendor and the posting of prices on the cart.
 15. Signs or displays with intermittent flashing, moving, or blinking light, or varying intensity of light or color;

16. Operating without a County Department of Public Health permit when required; and
17. Operating in violation of any other generally applicable law.

Section 5.08.060 Stationary Sidewalk Vending Locations and Standards.

- A. Stationary sidewalk vendors shall be prohibited from operating or establishing in any residential zone of the Town, including the low and very low density residential (R-LD, R-VLD), residential agricultural (R-A), estate residential and estate residential $\frac{3}{4}$ (R-E, R-E $\frac{3}{4}$), equestrian residential (R-EQ), single and multi-family residential (R-SF, R-M), and mobile home park.
- B. Stationary sidewalk vendors may operate in non-residential zones of the Town, including mixed use zones, provided they comply with all of the following:
 1. The sidewalk vendor is duly licensed in accordance with Apple Valley Municipal Code Section 5.08.030; and
 2. Sidewalk vending hours shall not be conducted between the hours of 2AM and 6AM of every day.
 3. Sidewalk vending of food or merchandise shall be prohibited within five hundred feet (500') of an area occupied by a Certified Farmer's Market.

Section 5.08.070 Sidewalk Vending in Parks, Certified Farmer's Markets.

- A. Stationary sidewalk vending of food or merchandise shall be prohibited within five hundred feet (500') of any Town Park with a concession stand operated by a vendor under exclusive contract with the Town selling similar food or merchandise or in an area occupied by a Certified Farmer's Market.
- B. Except as otherwise specified in Subsection (A), sidewalk vendors may operate in Town Parks provided they meet all of the following:
 1. The sidewalk vendor is duly licensed in accordance with Apple Valley Municipal Code Section 5.08.030; and
 2. The sidewalk vendor shall cease operations one (1) hour prior to the close of the park;

Section 5.08.080 Roaming Sidewalk Vending.

- A. Roaming sidewalk vendors shall comply with all of the following:
 1. The sidewalk vendor is duly licensed in accordance with Apple Valley Municipal Code Section 5.08.030;
 2. Sidewalk vending in residential neighborhoods shall not be conducted between the hours of 10PM and 7AM;

3. Sidewalk vending hours in non-residential zones shall not be conducted between the hours of 2AM and 6AM; and
4. The sidewalk vendor shall not conduct business from a public street.
5. Sidewalk vending of food or merchandise shall be prohibited within five hundred feet (500') of an area occupied by a Certified Farmer's Market.

Section 5.08.090 Suspension and Revocation.

- A. A sidewalk vendor permit issued under this Chapter may be suspended or revoked by the Director of Finance or their designee after four (4) or more violations of this Chapter, Title 5, or the Municipal or Development codes of the Town of Apple Valley related to sidewalk vending activities, at their discretion, and for any of the following causes:
 1. Fraud or misrepresentation in the course of vending;
 2. Fraud or misrepresentation in the application for the permit;
 3. Vending in a manner that creates a public nuisance or constitutes a danger to the public.
- B. Notice of the suspension or revocation of a sidewalk vendor permit issued under this Chapter shall be mailed, postage prepaid, to the holder of the sidewalk vendor permit at their last known address.
- C. No person whose sidewalk vendor permit has been revoked pursuant to this Chapter shall be issued a sidewalk vendor permit for a period of two (2) years from the date revocation becomes final.

Section 5.08.100 Appeals to Town Manager.

Within fifteen (15) days of receipt of a notice of suspension or revocation of a sidewalk vendor permit, the permittee shall have the right to appeal such action or decision to the Town Manager, or their designee. An appeal shall be made by filing a written statement of appeal with the Director of Government Services setting forth the grounds for the appeal. The filing of an appeal shall stay the enforcement of any decision to suspend or revoke the permit and the Director of Government Services shall transmit the written statement of appeal to the Town Manager, or their designee, within ten (10) days of its filing. The Town Manager or their designee shall set a date, time and place for a hearing of appeal and it shall be set not later than sixty (60) days from the date of filing of the applicant's written statement of appeal with the Director of Government Services. Notice of the date, time and place of the hearing shall be given to the appellant in the same manner as provided for the mailing of the notice of suspension or revocation at least five (5) days prior to the date and time set for the hearing. At the hearing, the permittee and the Town shall be entitled to legal representation and may present relevant evidence, testify under oath, and call witnesses who shall testify under oath. The Town Manager, or their designee, shall not be bound by the traditional rules of evidence in a hearing,

except that hearsay evidence may not be the sole basis for the decision of the Town Manager. The Town Manager, or their designee, may continue the hearing as deemed necessary. The decision of the Town Manager, or their designee, on the appeal shall be final and binding on all parties concerned.

Section 5.08.110 Penalties.

- A. It is unlawful for any person to violate any provision or fail to comply with any requirements of this Chapter. A violation of this Chapter shall be punished by:
 - 1. An administrative fine not exceeding \$100 for a first violation.
 - 2. An administrative fine no exceeding \$200 for a second violation within one (1) year of the first violation.
 - 3. An administrative fine not exceeding \$500 for each additional violation within one (1) year of the first violation.
- B. A violation of vending without a sidewalk vending permit, may, in lieu of the penalties set forth in subsection (A), set forth above, be punished by:
 - 1. An administrative fine not exceeding two hundred (\$250) dollars for a first violation.
 - 2. An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year of the first violation.
 - 3. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one (1) year of the first violation.
- C. If an individual is subject to subsection (B), set forth above, for vending without a sidewalk vending permit, upon the individual providing proof of a valid permit issued by the Town, the administrative fines set forth in this Chapter shall be reduced to the administrative fines set forth in subsection (A), respectively.
- D. The proceeds of any administrative fines assessed pursuant to this Chapter shall be deposited in the treasury of the Town.
- E. A sidewalk vendor permit shall be revoked upon fourth and subsequent violations.
- F. Any violation of this Chapter shall not be punishable as an infraction or misdemeanor, and any person alleged to have violated any provisions of this Chapter shall not be subject to arrest except as otherwise permitted by law.
- G. Failure to pay an administrative fine assessed under this Chapter shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in this Chapter shall not be assessed.

- H. All fines imposed pursuant to this Chapter shall be subject to an ability to pay determination as described in Government Code section 51039(f). The Town shall provide notice of the violator's right to request an ability to pay determination concurrently with the issuance of the citation. The person may request a determination at any time the fine remains unpaid.
1. If the person meets the criteria described in subdivision (a) or (b) of Government Code section 68632, the Town shall accept, in full satisfaction, twenty (20) percent of the administrative fine imposed pursuant to this Chapter.
 2. The Town may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.
- I. A person who is currently serving, or who completed, a sentence, or who is subject to a fine resulting from a misdemeanor or infraction conviction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under SB 946 had it been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in their case.
- J. Nothing contained herein shall be construed to impede the ability of the Town or County to enforce County Public Health Department codes and regulations."

SECTION 5. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council of the Town of Apple Valley hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 6. This Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. 14 Cal. Code Regs. § 15378(a). Further, this Ordinance is exempt from CEQA as there is no possibility that this Ordinance or its implementation would have a significant negative effect on the environment. 14 Cal. Code Regs. § 15061(b)(3). The Planning Department staff shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

SECTION 7. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 8. Publication. The Town Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the Town Council members

voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City.

APPROVED, AND ADOPTED by the Town Council of the Town of Apple Valley, California, at a regular meeting held on the 27th day of October 2020.

Scott Nassif, Mayor

Attest:

La Vonda M-Pearson, Town Clerk

Approved as to form:

Thomas A. Rice, Town Attorney

Approved as to content:

Douglas B. Robertson, Town Manager