

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA AMENDING CHAPTER 5.28 "PUSHCART VENDORS, FOOT VENDORS AND PEDDLERS" OF TITLE 5 "BUSINESS LICENSES AND REGULATIONS" AND SECTION 10.16.090 "PARKING BY PEDDLERS AND VENDORS-PERMITS" OF CHAPTER 10.16 "STOPPING, STANDING, AND PARKING" OF TITLE 10 "VEHICLES AND TRAFFIC" OF THE DESERT HOT SPRINGS MUNICIPAL CODE

WHEREAS, the City of Desert Hot Springs ("City") is a municipal corporation and a charter city; and

WHEREAS, Chapter 5.28 and Section 10.16.090 of the Desert Hot Springs Municipal Code currently regulate commercial vending through motorized and non-motorized vehicles and conveyances; and

WHEREAS, Senate Bill 946, effective on January 1, 2019, adds Government Code Sections 51036 *et. seq.*, imposing broad restrictions on local jurisdictions' ability to regulate non-motorized sidewalk vending; and

WHEREAS, the City Council now desires to amend Chapter 5.28 and Section 10.16.090 of the Desert Hot Springs Municipal Code to conform with Senate Bill 946; and

WHEREAS, the City Council finds that the regulations provided in this ordinance are directly related to the City's objective in protecting the health, safety and welfare of the City's residents; and

WHEREAS, the City Council now adopts this ordinance to regulate the time, place, and manner of sidewalk vending to address the health, safety, and welfare concerns; and

WHEREAS, the City Council finds that this ordinance is necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; and

WHEREAS, the City Council finds that this ordinance is necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of City parks.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. **RECITALS**

That the foregoing recitals are true and correct and are herein adopted by this reference.

Section 2. **AMENDMENT OF CHAPTER 5.28 "PUSHCART VENDORS, FOOT VENDORS AND PEDDLERS" OF TITLE 5 "BUSINESS LICENSES AND REGULATIONS" OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

Chapter 5.28 ("Pushcart Vendors, Foot Vendors and Peddlers") of Title 5 ("Business Licenses and Regulations") of the Desert Hot Springs Municipal Code is hereby amended as follows:

Chapter 5.28 ~~PUSHCART VENDORS, FOOT~~ **SIDEWALK** VENDORS AND PEDDLERS

5.28.010 Purpose.

The purposes of this chapter are:

A. **To establish a sidewalk vendor permitting and regulatory program in compliance with Senate Bill 946 (Chapters 459, Statutes 2018), as those statutes may be amended, while protecting the public health, safety, and welfare; ~~The regulation of individuals entering upon private property, particularly private residential property, for the purpose of peddling of goods, wares, merchandise or food;~~**

B. The regulation of individuals peddling goods, wares, merchandise, food or services on public or private property whether by foot, motorized or nonmotorized vehicles;

C. To protect the public health, safety and welfare against unlawful activities or operations by individuals falsely representing themselves as peddlers **or sidewalk vendors;**

D. To protect the public health, safety and welfare by regulating negative land use, public safety, and traffic impacts. These negative impacts include, but are not limited to:

1. An increase in the amount of litter present and visible on both public and private property in the City;

2. Disturbing landscaping in front, side and backyard setbacks when peddlers walk across private property;

3. An increased risk of vehicle accidents and personal injury when peddling from motorized vehicles;

4. Invasion of personal privacy when motorized vehicles remain parked for long periods of time in front of a person's home or business;

5. Disruption of the peaceful repose of residents when catering trucks or other motorized or nonmotorized vehicles emit sounds to gain the attention of potential customers;

6. An increased risk of personal injury when carrying products through a neighborhood and exposing such items to the public for sale; and

7. An increased risk that the food items or products being offered for sale in the City are not handled, prepared or stored in sanitary conditions;

8. Interference with the performance of police, fire, or other emergency services;

9. Interference with the flow of pedestrian or vehicular traffic including ingress to, and egress from, any residence, public building, place of business, from the street to public sidewalk, or persons exiting or entering parked or standing vehicles.

E. To balance the rights and interests of those engaged in commercial and nonprofit activities with the rights and interests of those who do not want to be disturbed by such activities on private and public property;

F. The purpose and intent of this chapter is to regulate the sale of goods, merchandise, wares, food, and non-food items within the City by peddlers **and sidewalk vendors.**

G. The City Council finds that the unique conditions of the City of Desert Hot Springs require certain restrictions on sidewalk vending, as defined in this chapter, as follows:

1. The corridor on Palm Drive between Pierson Boulevard and Camino Aventura is a major thoroughfare within the City of Desert Hot Springs that since 2007, has had twelve fatal traffic collisions. This corridor is subject to unique conditions such as increased speed, fewer traffic control devices and bus stops placed in areas not located near a marked crosswalk. The City Council has since established a safety enhancement zone along this corridor pursuant to Chapter 12.25 of the Desert Hot Springs Municipal Code. The effect of this safety enhancement zone designation, among other things, is to double fines for traffic violations. Restrictions on sidewalk vending along this corridor are necessary to protect the public from injury due to the unique circumstances of this corridor.

2. Since 2003, the City of Desert Hot Springs has experienced an increase in traffic collisions, involving vehicle vs. vehicle, vehicle vs. bicyclist and vehicle vs. pedestrian. Between years 2003-2012, there were eighteen bicycle collisions and fifty-two pedestrian collisions that occurred in the City. In 2016, there were seven fatal traffic collisions and in 2017 there were eight fatal traffic collisions. Restrictions on sidewalk vending throughout the City of Desert Hot Springs are necessary to protect the public health and safety from traffic collisions.

3. Many of the City's parks provide recreational opportunities and restrictions on sidewalk vending are necessary to protect the natural resources, recreational opportunities, as well as scenic and natural character of these parks. Restrictions on sidewalk vending at public parks are necessary to protect the health, safety and welfare of those persons engaged in recreational activities, the natural character of parks, and the natural resources of parks.

5.28.020 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Captive audience" means one or more purposefully stationary persons, such as persons in lines or seated in public areas.

"City" means the City of Desert Hot Springs.

"Engaging in the business" means and includes conducting, managing or carrying on of any such business or helping therewith, by any person in any capacity.

"Food" and "food products" means any liquid or edible product designed for human consumption, including but not limited to, fruits, vegetables, meats, candy, ice cream and other milk products, soda pop, juice, beverages and any other prepared or unprepared edible item.

~~"Foot vendor" means any person selling, intending to sell, displaying or offering to sell any food, food products, goods, wares, merchandise, or other nonfood items which are carried on his or her person in a basket, backpack, box or other device or container used to carry goods.~~

"Motorized vehicle" shall include but is not limited to, any motor vehicle, truck, car, trailer, conveyance or structure not permanently fixed to permanent foundation and which may be moved under its own power, towed by a motor vehicle, motorcycle or other mobile device.

"Peddle" and "peddling" mean traveling by motorized vehicle, or any other type of conveyance from place-to-place, house-to-house, or from street-to-street, carrying, conveying or transporting food products, goods, wares, merchandise, or food and offering, intending to sell, displaying or soliciting the same for sale.

"Peddler" means any person, traveling by motorized vehicle or any other type of conveyance from place-to-place, house-to-house, ~~or from street-to-street~~, carrying, conveying or transporting goods, wares, merchandise, food or food products and concurrently offering, intending, displaying or soliciting the same for sale. "Peddler" includes any person, who travels from place-to-place, selling or offering for sale any goods, wares, merchandise or food solely from a motorized vehicle. "Peddler" does not include "sidewalk vendor," "roaming vendor," or "stationary sidewalk vendor" "pushcart vendor" or "foot vendor" as defined by this chapter.

"Permittee" means a person issued a permit pursuant to this chapter.

"Person" means any individual, firm, business, partnership, corporation, cooperative, company, association, joint stock association, church, religious sect, religious denomination, society, organization, or league and shall include any trustee, receiver, assignee, agent, solicitor; or other similar representative thereof.

"Public sidewalk" "public street" and "public right-of-way" mean all of those areas dedicated as public thoroughfares, including, but not limited to, roadways, parkways, medians, alleys, sidewalks, public ways and public rights-of-way.

"Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

"Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. "Sidewalk vendor" includes "roaming sidewalk vendor," and "stationary sidewalk vendor."

"Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.

~~"Pushcart" means any human propelled wheeled vehicle that contains food, food products, goods, wares or merchandise, or other nonfood items sold or intended for sale.~~

~~"Pushcart vendor" means any person selling, intending to sell, displaying or soliciting any food, food products, goods, wares, merchandise or other nonfood items from a pushcart.~~

"Sidewalk vending" and "sidewalk vend(s)" means any action that qualifies a person as a sidewalk vendor.

5.28.030 ~~Pushcart vendor and foot vendor Sidewalk Vendors.~~

~~A. No person shall sell or offer for sale any food, beverage, or product from any pushcart, portable box, stand, bag or similar container on any street, parkway, sidewalk, public property, public right-of-way, public sidewalk or at any unenclosed area open to the general public.~~

~~B. No person shall employ, direct or otherwise cause any other person to vend or offer to vend any food, beverage or product in violation of subsection A of this section.~~

~~C. No foot vendor shall sell food items, goods, wares, merchandise or other nonfood items on any public street, public sidewalk, public right of way or other public place or building within the City. No foot vendor shall sell food, nonfood items, or any other goods, wares or merchandise from privately owned property without prior written permission of the owner. Any vendor receiving such permission must comply with all other sections of this chapter and zoning ordinances and all other applicable state and federal laws.~~

A. No person shall engage in sidewalk vending within the City without first obtaining a permit from the City Manager or designee pursuant to this chapter.

B. Sidewalk Vendor Permit. To obtain or to renew a Sidewalk Vendor Permit, a sidewalk vendor must provide to the City a written application, on a form provided by the City, which shall contain the following information:

1. The name, current address, and telephone number of the person applying to become a sidewalk vendor;

2. Day(s) and hours of operation;

3. Location(s) of operation within the City;

4. Description of the food or merchandise offered for sale or exchange;

5. Whether the sidewalk vendor intends to operate a stationary cart or a mobile cart;

6. If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal and any owners of the company, partnership, or corporation;

7. A copy of a California's driver's license or identification number, or individual taxpayer identification number. Such information is not a public record and will remain confidential as required by Government Code section 51038(c)(4);

8. A copy of a valid California Department of Tax and Fee Administration seller's permit, as required by law.

9. An acknowledgment that the sidewalk vendor shall comply with all generally applicable state, federal, and local laws.

10. Certification that the information contained in the application is true to his or her knowledge and belief.

11. A statement whether or not the applicant, employee or agent has been convicted of any felony or of any misdemeanor involving injury to person(s) or property, theft, fraud, or misrepresentation within five years.

12. Any other information deemed relevant by the City Manager or designee.

C. A Sidewalk Vendor Permit is non-transferrable. Any change in ownership or operation of a sidewalk vendor requires a new permit under this chapter. All Sidewalk Vendor Permits issued under this chapter shall expire 12 months from the date of issuance.

D. The City Manager or designee shall issue or deny a permit within 30 days of receipt of a completed application.

E. A permit may be denied by the City Manager or designee on any of the following grounds:

1. The applicant, employee or agent has been convicted of a felony or misdemeanor involving bodily injury to persons, theft, fraud or misrepresentation within five years preceding the application date;

2. The applicant has made a materially fraudulent, misleading or false statement of fact to the City;

3. The applicant has violated any provision of this chapter; or

4. The applicant's permit has been previously revoked as provided in this chapter.

F. The City Manager or designee shall notify the applicant of any denial by depositing written notice of such decision in the first-class U.S. mail, postage prepaid, addressed to the applicant, not later than ten days following the date of such decision. A notice of denial of an application must contain a statement of the facts upon which the denial is based and must contain a statement of the appeal procedure contained in Section 5.28.100.

5.28.040 Peddlers permit required.

Except as otherwise provided in Section 5.28.060, it is unlawful for any person to engage in the business of peddling or to go from door-to-door, or house-to-house or street-to-street or place-to-place for the purpose, direct or indirect, and whether or not the same is the sole purpose, of peddling, without first obtaining a permit and paying the applicable fees as provided in this chapter.

5.28.050 Peddler permit exemptions.

The following persons and entities shall not be required to obtain the permit required by Section 5.28.040:

A. Persons soliciting orders from, or selling to, retail dealers for use, or for resale or to manufacturers for processing at a fixed place of business in the City, or elsewhere, and which merchandise has been ordered to be so delivered, prior to such delivery;

B. Persons with a valid permit issued pursuant to this chapter and operating pursuant to the terms of this chapter.

5.28.060 **Peddler** Permit application and issuance.

A. The City's designee is responsible for granting, denying, revoking, renewing, suspending, and canceling peddler permits. The City's designee shall be the City Manager, or

any other officer or employee designated in writing by the City Manager to deal with and enforce the provisions of this chapter. An application for a permit must be made on a form provided by the City.

B. The completed application shall contain the following information and shall be accompanied by the following documents:

1. Name, birth date, driver's license or other identification number, social security number, and physical description of the applicant;

2. Permanent home address and telephone number, and local address and telephone number of the applicant;

3. The name and address for the applicant's business, his or her interest in or relationship with such business, and if the applicant is employed, the name and address of his/her employer together with description of the exact relationship between the applicant and such employer;

4. A brief description of the nature of the applicant's business and of the product or service to be peddled;

5. A fixed length of time for which the permit to peddle is desired;

6. A statement whether or not the applicant, employee or agent has been convicted of any felony or of any misdemeanor involving injury to person(s) or property, theft, fraud, or misrepresentation within five years;

7. A statement whether or not the applicant has failed to pay any judgment arising from or connected with the activities authorized by the permit;

8. A statement whether or not the applicant has suffered revocation or suspension of any permit required by the City of Desert Hot Springs;

9. A statement whether or not the applicant has failed to pay any business license fee or tax imposed by the City of Desert Hot Springs;

10. A picture (of passport quality) of the applicant and any agent, employee or representative, who will engage in soliciting or peddling activities, for inclusion on the identification card;

11. The vehicle identification number, license plate number and proof of current registration for the motorized vehicle, if any, which will be used for peddling in the City;

12. A copy of or evidence of automobile insurance required under state law for operating the motorized vehicle, if any, which is identified in the permit application form;

13. If the application involves the sale of food, produce, or any other item intended for human consumption, the applicant must provide valid health or other permit(s), issued by the appropriate agency, as required by applicable local, state or federal law; and

14. Other information the City Manager or designee deems necessary to process the application.

C. The City Manager or designee shall issue or deny permit within 30 days of receipt of a completed application.

D. A permit may be denied by the City Manager or designee on any of the following grounds:

1. The applicant, employee or agent has been convicted of a felony or misdemeanor involving bodily injury to persons, theft, fraud or misrepresentation within ~~ten~~ **five** years preceding the application date;

2. The application for permit under this chapter contains fraud, misrepresentation or false statement;

3. The applicant has violated the provision of this chapter; or

4. The applicant's permit has been previously revoked as provided in this chapter.

E. The City Manager or designee shall notify the applicant of the denial by depositing written notice of such decision in the first-class U.S. mail, postage prepaid, addressed to the applicant, not later than ten days following the date of such decision. A notice of denial of an application must contain a statement of the facts upon which the denial is based and must contain a statement of the appeal procedure contained in Section 5.28.100.

5.28.070 Permit use and manner of peddling.

A. Display. Every applicant shall be issued a permit to be carried on person and exhibited on request by any person to persons they deal with and shall at all times carry the permit issued hereunder and exhibit it on request to any police officer or City official.

B. Transfer Prohibited. It is unlawful for any person other than permittee to use or wear any permit issued under the provisions of this chapter.

C. Hours of Operation. It is unlawful for any person to conduct any activities regulated under the provisions of this chapter between 8:00 p.m. and 8:00 a.m.

D. Waste Receptacles. No peddler shall sell or offer for sale any food from a motorized vehicle unless he or she maintains a clearly designated litter receptacle in the immediate vicinity of the vehicle, marked with a sign requesting use by patrons. Prior to leaving the location, the peddler shall pick up, remove and dispose of all trash or refuse which consists of materials originally dispensed by the peddler, including any packages or containers, or parts thereof, used with or for dispensing such food.

~~**E. Location of Permitted Activities. No person shall peddle in any of the following places within the City:**~~

~~**1. Within 200 feet of the closest point on the property line of a public park or public playground;**~~

~~**2. Within 300 feet of the closest point on the property line of a municipal recreational center;**~~

~~**3. Within 100 feet of any street intersection;**~~

~~**4. At a location where space for pedestrian passage will be reduced to less than six feet;**~~

~~**5. On any sidewalk or street adjacent to a curb which has been designated as a white, yellow, blue, or red zone;**~~

- ~~6. Within 15 feet of any crosswalk, fire hydrant, or driveway;~~
- ~~7. Within 100 feet of any public transit "bus stop" sign;~~
- ~~8. Within 300 feet of a like peddler, except where separated by a public street with four or more moving lanes;~~
- ~~9. At any location or premises which are posted with a clearly visible sign bearing the words "No Peddlers or Solicitors" or words of the same import;~~
- ~~10. At any location for more than 30 minutes without moving to new location at least 300 feet removed therefrom and may not return to a location where the peddler has stopped to peddle within the previous two hours;~~
- ~~11. At any park owned or operated by the City;~~
- ~~12. On landscaped areas of public property.~~

EE. Manner of Peddling.

1. No peddler shall peddle goods, merchandise, wares or food by sitting, standing or walking on a public sidewalk or street or upon a median or grassy embankment within a public sidewalk, public street or public right-of-way, and in no case shall a peddler stand or park any motorized vehicle for the purposes of peddling or selling from such vehicle on any privately-owned property. This does not include sitting or standing in a motorized vehicle which is lawfully parked on a public street and from which the peddler has a permit.
2. No peddler shall stand or park any motorized vehicle for more than 30 minutes without moving to a new location at least 300 feet removed therefrom and may not return to a location where the peddler has stopped to peddle within the previous two hours.
3. No peddler shall park or stand a motorized vehicle used for peddling in a manner which causes a hazard to vehicular or pedestrian traffic by creating conditions that impede the flow of vehicular or pedestrian traffic or create conditions of imminent harm to vehicular or pedestrian traffic or other vehicles and pedestrians.
4. No peddler shall persistently peddle any goods, merchandise, wares or food to any member of the public after such member of the public expresses his or her desire not to purchase anything from the peddler.
5. No peddler shall intentionally or deliberately obstruct the free movement of any person on any public sidewalk, public street, public right-of-way or in any public place.
6. No peddler shall peddle any items to a captive audience.
7. No peddler shall threaten any injury or damage to any person who declines to purchase any items being peddled, if such threat, whether by word or gesture, would make a reasonable person fearful.
8. No peddler shall peddle or attempt to peddle to the occupants of vehicles standing or moving upon any public street or highway. Nothing in this section shall be construed to prohibit peddling to the occupants of any vehicle that is lawfully parked.
9. No peddler shall park or stand the motorized vehicle in violation of any conditions included in the permit issued pursuant to this chapter.

10. No peddler shall peddle from any motorized vehicle which has not been identified in the application.

11. No peddler shall stop, stand or park any motorized vehicle in violation of any provision of the California Vehicle Code or the City of Desert Hot Springs Municipal Code.

12. No peddler shall peddle any food unless the items being sold comply with all applicable food labeling requirements established by the state of California and the peddler has all required permits, including, without limitation, health permits, to sell such items.

13. No peddler shall peddle any goods from any motorized vehicle which does not have insurance as required under state law for operating the motorized vehicle.

G. Activities Creating Nuisance. No peddler, in the course of activities regulated in this chapter, shall create any public nuisance or disturb the peace and quiet of the neighborhood by the use of loud noise, brilliant lights, or any other actions constituting a public nuisance.

H. Compliance with Law. This chapter may not be the sole source of regulation of the activities permitted under this chapter. Permittees shall comply with all state and federal laws and all local ordinances.

5.28.080 Fees—Terms.

All applications for permits under the provisions of this chapter shall be accompanied by an application fee established by resolution of the City Council. No application fee paid under this chapter shall be refunded. All original permits and renewals granted under this chapter shall also require a fee. All permits issued under the provisions of this chapter shall be valid for one year. A permit may be renewed by the timely payment of a renewal fee prior to the expiration of the permit. All permits shall cease and terminate 30 days after the default of payment. Any permit that has terminated pursuant to this chapter shall require the filing of a new application for a permit under this chapter.

5.28.085 Sidewalk Vendor General Regulations

A. No sidewalk vendor may obstruct the free movement of any person on any public right-of-way or other public place, or any place open to the public generally. Additional restrictions include the following:

1. No sidewalk vendor may operate within fifty (50) feet of any school crossings.

2. No sidewalk vendor may operate within thirty ~~thirty~~ (30) feet of the Desert Hot Springs Senior Center.

3. No sidewalk vendor may operate within thirty ~~thirty~~ (30) feet of any crosswalks.

4. No sidewalk vendor may operate within thirty (30) feet of any sidewalk curb or edge of pavement.

5. No sidewalk vendor may operate within the Palm Drive corridor between Two Bunch Palms Trail Park Drive and Camino Aventura.

B. No sidewalk vendor may impede the flow of vehicular traffic or parking, such as on public streets or public highways.

C. No sidewalk vendor may impede any police officer, firefighter, or emergency medical personnel who are actively performing their duties or providing services to the public.

D. A sidewalk vending permit does not provide an exclusive right to operate within any specific portion of the public right-of-way.

E. Every sidewalk vendor must prominently display their city-issued Sidewalk Vending Permit on the streetside portion of their pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance when operating in the public right-of-way.

F. Sidewalk vending hours' limitations in areas zoned for nonresidential use will be as restrictive as any limitations on hours of operation imposed on other businesses or uses on the same street, excluding those permitted to operate twenty-four hours.

G. Stationary sidewalk vendors are prohibited from operating in areas that are exclusively residential.

H. A sidewalk vendor is prohibited from operating within five-hundred (500) feet of a permitted certified farmers' market, a permitted swap meet, or any area subject to a temporary use permit for the duration of the permit.

I. No sidewalk vendor may vend to customers in moving vehicles.

J. Stationary sidewalk vendors shall not sell food or merchandise or engage in any sidewalk vending activities:

1. At any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire; or

2. On sidewalks directly adjacent to or within residential areas.

K. No sidewalk vendor shall take any action constituting a public nuisance under the Desert Hot Springs Municipal Code.

L. No sidewalk vendor shall interfere in any way with anyone engaged in a recreational activity or in a playground, and shall not approach spectators who are watching a recreational activity to sell food or merchandise.

M. Penalties. Sidewalk vending in violation of this section shall not be punishable as a criminal infraction or misdemeanor, but shall be subject to an Administrative Citation as follows:

1. Every person vending without a Sidewalk Vendor Permit is guilty of an administrative violation punishable by an administrative fine not to exceed:

- i. Two hundred fifty dollars (\$250.00) for a first violation;
- ii. Five hundred dollars (\$500.00) for a second violation within one year of the first violation;
- iii. One thousand dollars (\$1,000.00) for each additional violation within one year of the first violation.
- iv. Upon proof of a valid Sidewalk Vendor Permit, the administrative fine under Section 5.28.090(C)(1) shall be reduced to the corresponding administrative fine in Section 5.28.085(M)(2).

2. For all violations of this section, other than vending without a permit, an administrative fine shall not to exceed:

- i. One hundred dollars (\$100.00) for a first violation;

- ii. Two hundred dollars (\$200.00) for a second violation within one year of the first violation;
- iii. Five hundred dollars (\$500.00) for each additional violation within one year of the first violation.

N. Failure to pay an administrative fine under Section 5.28.085(M) is not punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized will not be assessed.

O. Sidewalk Vendor Permits issued under this chapter may be revoked by the City Manager or designee at any time upon the fourth violation or subsequent violations within one (1) year of the first violation. A person whose Sidewalk Vendor Permit is revoked may not renew his or her permit for the term of that permit. The City Manager or designee shall notify the permit holder of a revocation of a Sidewalk Vendor Permit by depositing written notice of such revocation in the first-class U.S. mail, postage prepaid, addressed to the permit holder, not later than three calendar days following the decision to revoke the permit. The notice of revocation must contain a statement of the facts upon which the revocation is based and must contain a statement of the appeal procedure set forth in Section 5.28.100.

5.28.090 **Peddler** Permit revocation.

A. **Peddler** Permits issued under the provisions of this chapter may be revoked by the City Manager or designee at any time for any of the following causes:

1. Subsequent determination of facts or subsequent occurrences that would have required a denial of the permit at the time of the application pursuant to Section 5.28.060;
2. The applicant engages in fraud, misrepresentation or false statement in the course of engaging in the business of peddler;
3. Any violation of the provisions of this chapter;
4. Conviction of any felony or misdemeanor involving injury to person(s) or property, theft, fraud or misrepresentation;
5. The permittee engages in business of peddling in an unlawful manner or in such a manner as to constitute a breach of the peace, or to constitute a menace to the health, safety or general welfare of the public, or to constitute public nuisance pursuant to City of Desert Hot Springs Municipal Code or the state law.

B. The City Manager or designee shall notify the permit holder of a revocation of a **peddler** permit by depositing written notice of such revocation in the first-class U.S. mail, postage prepaid, addressed to the applicant, not later than three calendar days following the decision to revoke the permit. The notice of revocation must contain a statement of the facts upon which the revocation is based and must contain a statement of the appeal procedure set forth in Section 5.28.100.

5.28.100 Appeals.

~~Any person aggrieved by the determination of the City Manager or designee to deny the issuance of a permit or to revoke a permit may appeal such decision to the City Council. Such appeal shall be taken by filing a written notice of appeal with the City Clerk within ten days of the date of the decision to deny or revoke and shall set forth the grounds for the appeal. A failure to file a timely appeal shall render the decision to deny~~

~~or suspension final. The City Clerk shall set a time and place for a hearing on the appeal within ten days of the filing of the appeal. The City Council's determination following the hearing shall be by a resolution of the City Council and shall be mailed to the applicant. The decision of the City Council shall be final and conclusive.~~

A. Decisions of the City Manager or designee to revoke or deny a permit shall be appealed in the following manner:

1. Appeals shall be filed within fifteen (15) calendar days of service of the City Manager or designee's notice of the decision;

2. Appeals of decisions shall be made in writing on forms provided by the City.

3. Decisions that are appealed shall not become effective until the appeal is resolved.

4. All appeals of decisions shall be heard by a Hearing Officer designated pursuant to Section 4.24.250 of the Desert Hot Springs Municipal Code, or any successor section.

5. The Hearing Officer shall have the powers set forth in Sections 4.24.250 and 4.24.260 of the Desert Hot Springs Municipal Code, or any successor section.

6. All appeals of decisions shall be conducted in accordance with Sections 4.24.270 through 4.24.380 of the Desert Hot Springs Municipal Code, or any successor sections, and shall comply with the following additional procedures:

i. At least ten (10) days prior to the hearing, the person requesting the hearing shall be provided with copies of the citations, reports and other documents or evidence submitted or relied upon by the City Manager or designee;

ii. No other discovery is permitted. Formal rules of evidence shall not apply. Administrative hearings are intended to be informal in nature. The Hearing Officer has the authority to determine the relevance and credibility of any evidence at a hearing. The Hearing Officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy.

7. The decision of the Hearing Officer shall be final.

B. Administrative citations shall be appealed in the following manner:

1. Any recipient of an administrative citation may request an ability-to-pay determination, contest that there was a violation of the Desert Hot Springs Code, and/or that he or she is the responsible person, by completing a request for hearing in a form provided by the City. Any person requesting a hearing and ability-to-pay determination may file the request within the time frames set forth in Government Code Section 51039(f)(1), or any successor section.

2. All appeals of administrative citations shall be heard by a Hearing Officer designated pursuant to Section 4.24.250 of the Desert Hot Springs Municipal Code, or any successor section.

3. All appeals of decisions shall be conducted in accordance with Sections 4.24.270 through 4.24.380 of the Desert Hot Springs Municipal Code, or any successor sections.

4. The Hearing Officer shall have the powers set forth in Sections 4.24.250 and 4.24.260 of the Desert Hot Springs Municipal Code, or any successor section, and the Hearing Officer shall have the following additional powers:

i. Reduce the fine based upon the person's ability to pay the fine;

ii. If the Hearing Officer finds the person meets the criteria described in subdivision (a) or (b) of Government Code section 68632, or any successor section, the Hearing Officer, shall order the City to accept, in full satisfaction, twenty (20) percent of the administrative fine imposed pursuant to this chapter;

iii. The Hearing Officer 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;

5. The decision of the Hearing Officer shall be final.

5.28.110 Impounding pushcarts or other devices.

A. Any police officer or any other person authorized to enforce this chapter may take possession of a pushcart or other device used in violation of this chapter pursuant to the provisions of Section 2080.10 of the California Civil Code.

B. Upon taking possession of a pushcart or other device under this section, the City Manager or designee shall do all of the following:

1. Take responsibility for the storage, documentation and disposition of the pushcart or other device.

2. Provide the person from whom the pushcart or other device was taken with a receipt and instructions for the retrieval of the pushcart or other device. The receipt and instructions shall either be given to the person from whom the pushcart or other device was taken at the time the officer or other authorized person obtains the pushcart or other device or immediately mailed, by first class mail, to the person from whom the pushcart or other device was taken.

3. If the officer or other authorized person has knowledge that the person from whom the pushcart or other device was taken is not the owner, the City Manager or designee shall make reasonable efforts to identify the owner. If the owner is identified, the City Manager or designee shall mail, by first class mail, a receipt and instructions for the retrieval of the pushcart or other device.

C. The receipt and instructions shall notify the person from whom the pushcart or other device was taken that the pushcart or other device must be claimed within 60 days after the City obtains possession or the pushcart or other device will be disposed of in accordance with the disposal provisions of this code or the Civil Code. Within 60 days, the person may do one of the following:

1. Retrieve the pushcart or other device;

2. Authorize in writing another person to retrieve the pushcart or other device;

3. Notify the City in writing that he or she is unable to retrieve the pushcart or other device and request the City to hold the pushcart or other device. If a person notifies the public agency that he or she is unable to retrieve the pushcart or other device within 60 days, or have an authorized person retrieve the pushcart or other device, the public agency shall hold the pushcart or other device for not longer than ten

~~additional months, after which time the City may dispose of the pushcart or other device in accordance with the disposal provisions of this code or the Civil Code.~~

~~D. The City may charge reasonable costs of storage of pushcarts or other devices stored under the provisions of this chapter.~~

5.28.120 Violation ~~Misdemeanor Public nuisance.~~

A. ~~A violation related to sidewalk vending will be subject to the applicable penalties under section 51039 of the Government Code and section 5.28.085 of the Desert Hot Springs Municipal Code as they may be amended from time to time. For all other violations of this chapter, Misdemeanor. Any any~~ first violation ~~of the provisions of this chapter~~ shall be an infraction. Any subsequent violation ~~of the provisions of this chapter~~ shall be a misdemeanor.

B. Public Nuisance. Any violation of this chapter, other than pertaining to sidewalk vending, shall be and is hereby declared to be unlawful and a public nuisance. Violations may be prosecuted civilly or criminally and are subject to all applicable penalties of the Desert Hot Springs Municipal Code, in addition to any other applicable penalties or remedies prescribed by law. The city attorney may, in addition to or in lieu of prosecuting a criminal action under this chapter, commence an action or proceeding for the abatement, removal or enjoinder thereof, in the manner provided by the City of Desert Hot Springs Municipal Code or any other applicable law, and may take such other steps and may apply to such court as may have jurisdiction to grant such relief as will abate or remove such establishment and restrain and enjoin any person from operating a pushcart contrary to this chapter.

5.28.130 Separate offense for each day.

Any person who violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

Section 3. AMENDMENT TO SECTION 10.16.090 "PARKING BY PEDDLERS AND VENDORS-PERMITS" OF CHAPTER 10.16 "STOPPING, STANDING, AND PARKING" OF TITLE 10 "VEHICLES AND TRAFFIC"

~~10.16.090 Parking by peddlers and vendors Permits.~~

~~A. Except as otherwise provided in this section, no person shall stand or park any vehicle, wagon or pushcart from which goods, wares, merchandise, fruits, vegetables or food stuffs are sold, displayed, solicited or offered for sale or bartered or exchanged, or any lunch wagon or eating car or vehicle, on any portion of any street within this City; except, that such vehicles, wagons or pushcarts may stand or park only at the request of a bona fide purchaser for a period of time not to exceed ten minutes in any one place. The provisions of this subsection shall not apply to persons delivering such articles upon order of or by agreement with a customer from a store or other fixed place of business or distribution.~~

~~B. No person shall park or stand on any street any lunch wagon, eating cart or vehicle, or pushcart from which articles of food are sold or offered for sale, without first obtaining a written permit to do so from the City Traffic Engineer which shall designate the specific location in which such cart shall stand.~~

~~C. No person shall park or stand any vehicle or wagon used or intended to be used in the transportation of property for hire on any street while awaiting patronage for such vehicle or wagon without first obtaining a written permit to do so from the City Traffic Engineer which shall designate the specific location where such vehicle may stand.~~

~~D. Whenever any permit is granted under the provisions of this section and a particular location to park or stand is specified therein, no person shall park or stand any vehicle, wagon or pushcart on any location other than as designated in such permit. In the event that the holder of any such permit is convicted in any court of competent jurisdiction for violating any of the provisions of this section, such permit shall be forthwith revoked by the City Traffic Engineer upon the filing of the record of such conviction with such officer and no permit shall thereafter be issued to such person until six months have elapsed from the date of such revocation.~~

Section 4. SEVERABILITY

That, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 5. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 6. AMENDING OF BAIL SCHEDULE

That the City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 7. EFFECTIVE DATE

That this ordinance shall take effect thirty days after its adoption.

Section 8. CERTIFICATION

That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the 5th day of March, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

[SIGNATURES FOLLOW ON THE NEXT PAGE]

ATTEST:

APPROVED:

Jerryl Soriano, City Clerk

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

DRAFT