

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA AMENDING SECTION 5.28.010 "PURPOSE" AND SECTION 5.28.085 "SIDEWALK VENDOR GENERAL REGULATIONS" OF CHAPTER 5.28 "SIDEWALK VENDORS AND PEDDLERS" OF TITLE 5 "BUSINESS LICENSES AND REGULATIONS" OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

**WHEREAS**, the City of Desert Hot Springs ("City") is a charter city organized pursuant to Article XI of the California Constitution; and

**WHEREAS**, Chapter 5.28 of the Desert Hot Springs Municipal Code ("DHSMC") currently regulate sidewalk vendors and peddlers, including a prohibition against sidewalk vending on the corridor on Palm Drive between Park Drive and Camino Aventura; and

**WHEREAS**, the City Council now desires to amend Chapter 5.28 of the Desert Hot Springs Municipal Code to extend the prohibition against sidewalk vending on Palm Drive from between Park Drive and Camino Aventura to between Pierson Boulevard and Camino Aventura; and

**WHEREAS**, the City Council finds that the corridor on Palm Drive between Pierson Boulevard and Camino Aventura is a major thoroughfare through the City of Desert Hot Springs, and subject to traffic conditions such increased speeds, fewer traffic control signals, large number of motor vehicles, and bus stops placed in areas not located near a marked crosswalk; and

**WHEREAS**, the City Council finds that 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; and

**WHEREAS**, the City Council finds that between years 2003-2012, there were 18 bicycle collisions and 52 pedestrian collisions that occurred in the City; and

**WHEREAS**, the City Council finds that in 2016, there were seven fatal traffic collisions and in 2017 there were eight fatal traffic collisions; and

**WHEREAS**, the City Council has taken active measures to protect the public from traffic hazards, including establishing safety enhancement zones, constructing new sidewalks, and adding a traffic control police officer; and

**WHEREAS**, the City Council finds that the amendments 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**, restrictions on sidewalk vending in the corridor on Palm Drive between Pierson Boulevard and Camino Aventura in the City of Desert Hot Springs are necessary to protect the public from traffic collisions and to promote pedestrian safety; and

**WHEREAS**, the City Council finds that regulations for signs erected by sidewalk vendors regarding the appearance, location, and other physical attributes of the signs are necessary to reduce traffic hazards and promote pedestrian safety; and

**WHEREAS**, the City Council finds that regulation of signs erected by sidewalk vendors with respect to the appearance, location, and other physical attributes of the signs are necessary in order to promote the community's aesthetics and to conform to the General Plan.

**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 SECTION 5.28.010 "PURPOSES" AND SECTION 5.28.085 "SIDEWALK VENDOR GENERAL REGULATIONS" OF CHAPTER 5.28 "SIDEWALK VENDORS AND PEDDLERS" OF TITLE 5 "BUSINESS LICENSES AND REGULATIONS" OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

Section 5.28.010 ("Purposes") and Section 5.28.085 ("Sidewalk vendor general regulations") of Chapter 5.28 ("Sidewalk 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 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;

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,

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, and

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. To mitigate hazards posed by commercial signs to pedestrians and motorists, and to preserve community aesthetics and appearance;**

**HG.** 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 12 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 12.28 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 18 bicycle collisions and 52 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.

#### 5.28.085 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 50 feet of any school crossings.
2. No sidewalk vendor may operate within 30 feet of the Desert Hot Springs Senior Center.
3. No sidewalk vendor may operate within 30 feet of any crosswalks.
4. No sidewalk vendor may operate within the Palm Drive corridor between **Pierson Boulevard** ~~**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 nonmotorized 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 24 hours.

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

H. A sidewalk vendor is prohibited from operating within 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. Notwithstanding any other provision of this code, sidewalk vendors may erect signs in the following manner:**

**1. Professionally designed signs permanently affixed to a canopy cover, pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance. Professionally designed sign means composed of vinyl lettering or similar design and material. No other signs are permitted.**

**NM.** 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:

a. \$250 for a first violation;

b. \$500 for a second violation within one year of the first violation;

- c. \$1,000 for each additional violation within one year of the first violation.
- d. Upon proof of a valid sidewalk vendor permit, the administrative fine under subsection (M)(1) shall be reduced to the corresponding administrative fine in subsection (M)(2).

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

- a. \$100 for a first violation;
- b. \$200 for a second violation within one year of the first violation;
- c. \$500 for each additional violation within one year of the first violation.

**ON.** Failure to pay an administrative fine under subsection (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.

**PO.** 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 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.

### **Section 3.**                      **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 4.**                      **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 5.**                      **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 6.                    EFFECTIVE DATE**

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

**Section 7.                    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 \_\_\_\_ day of \_\_\_\_\_, 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