

## ORDINANCE NO. 21-2200

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CHAPTER 5.04, BUSINESS LICENSES GENERALLY, CHAPTER 5.20, SOLICITORS, CHAPTER 5.48, MOBILE VENDORS, AND CHAPTER 13.04, PARKS

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The City Council of the City of Cupertino finds that:

**WHEREAS**, Senate Bill No. 946 ("SB 946"), which took effect on January 1, 2019, provides that cities and counties may not regulate sidewalk vending except in accordance with California Government Code sections 51038 and 51039;

**WHEREAS**, provisions of the Cupertino Municipal Code currently regulate sidewalk vendors in a manner that is inconsistent with SB 946, and the City seeks to adopt an enforceable sidewalk vending program that responds to the objective needs and circumstances of the Cupertino community;

**WHEREAS**, SB 946 only applies to sidewalk vending in public parks and rights-of-way, and private rights-of-way are still subject to private and local control;

**WHEREAS**, until the effective date of SB 946, the City regulated sidewalk vendors by means of a general license for "solicitors" and a mobile vending permit for certain mobile vendors. In light of the specific provisions for sidewalk vending in state law, regulating sidewalk vending through a registration requirement specific to the activity will enable the City to more effectively comply with state mandates;

**WHEREAS**, regulating sidewalk vending will benefit the City by promoting entrepreneurship and a dynamic streetscape, while ensuring protection of the public safety and welfare, in compliance with state law;

**WHEREAS**, unless properly regulated, sidewalk vending in the public right-of-way and in public parks creates the potential for increased safety risks including, but not limited to, interfering with the performance of police, firefighter, and paramedic services; contributing to traffic congestion; and interfering with the ability of pedestrians, transit users and persons with disabilities to follow a safe path of travel (by obstructing the right-of-way with vending equipment or by increasing congestion);

**WHEREAS**, the registration requirements of this ordinance are necessary to collect adequate information about sidewalk vending operations within city limits, to facilitate contact between the City and its sidewalk vendors, and to ensure that sidewalk vending does not adversely affect the public welfare;

**WHEREAS**, requiring sidewalk vendors to maintain a minimum unobstructed pedestrian path of four (4) feet at vending locations is necessary to ensure compliance with state and federal disability access standards;

**WHEREAS**, requiring sidewalk vendors to maintain a clearance at driveways and corner triangle clearances is necessary to ensure the safe flow of pedestrian and automobile traffic, and required of all development. This will ensure the safe flow of pedestrian and automobile traffic, which is particularly important to the safety of the elderly, the very young, persons with disabilities, and others who are less able to navigate crowds and obstacles that may require stepping off curbs when sidewalks have become obstructed;

**WHEREAS**, requiring sidewalk vendors to obtain any necessary permit from the Santa Clara County Department of Public Health before engaging in the sale of certain food to the public is necessary to protect the public health and safety;

**WHEREAS**, restricting sidewalk vending in parks is necessary to protect the health, safety and welfare of the public and the use and enjoyment of public spaces, natural resources, and recreational opportunities within the City;

**WHEREAS**, restricting sidewalk vending in parks is necessary to preventing undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of parks;

**WHEREAS**, restricting sidewalk vending near school grounds when the grounds are open for student instruction is necessary to protect the safety of children traveling to and from campus and to avoid disrupting classroom instruction and school activities;

**WHEREAS**, restricting sidewalk vending in residential areas is necessary to protect residents and visitors from excessive traffic impacts;

**WHEREAS**, restricting sidewalk vendors' use of sound amplifying equipment and other noise generating equipment is necessary to protect residents and visitors from excessive noise impacts;

**WHEREAS**, allowing a process for revoking a registration and appeals to any such decisions is an important tool to ensure compliance with the City's regulations and a fair complete due process for any sidewalk vendor;

**WHEREAS**, public outreach was conducted on August 11, and August 12, 2020 to discuss the proposed regulations with members of the public and on September 4, 2020 with the Chamber of Commerce;

**WHEREAS**, following public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on October 27, 2020 to consider the Ordinance;

**WHEREAS**, the Planning Commission adopted Resolution No. 6913 finding that the proposed actions are exempt from CEQA and recommending that the City Council adopt an ordinance to make Municipal Code Amendments relating to Mobile Vendors;

**WHEREAS**, the Planning Commission motion (made by Chair Moore and seconded by Vice Chair Wang and Com. Saxena (amendment)) amended the draft of Resolution No. 6913 prepared by staff as follows: “The Planning Commission recommends that the City Council adopt an Ordinance to amend Chapter 5.04; Business Licenses, generally Chapter 5.20; Solicitors; Chapter 5.48; Mobile Vendors; Chapter 11.28: Miscellaneous Parking Regulations, On Street parking, Chapter 13.04; Parks, and Chapter 19.100; Accessory Uses and Building Structures for Mobile Vendor regulations in accordance with SB946 and excepting portions which are not directly applicable to SB946.” and “Adopt the proposed amendments to the Municipal Code with the findings reflected in the proposed Ordinance which the Planning Commission makes as though set forth in their entirety in the Resolution only as applicable to SB946 in substantially the form as shown in said Exhibit”;

**WHEREAS**, on January 19, 2021 upon due notice, the City Council has held at least one public hearing to consider the Planning Commission’s recommendation and the Ordinance;

**WHEREAS**, the City Council is the decision-making body for this Ordinance;

**WHEREAS**, the City Council hereby adopts this Ordinance pursuant to its authority under Government Code section 51038 and finds that the regulation of sidewalk vendors set forth herein is directly related to protecting the health, safety, and welfare of the Cupertino community; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Adoption.**

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

**SECTION 2: Severability and Continuity.**

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful,

unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

**SECTION 3:** California Environmental Quality Act.

The proposed ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) Guidelines Section 15378 since these regulations are being adopted to regulate sidewalk vending and are not a project which may result in physical changes to the environment. In the event that this proposed amendment is found to be a project under CEQA, the proposed Ordinance is exempt from environmental review under section 15061 (b)(3) because “[w]here it can be seen with certainty that there is no possibility that the activity in question may have significant effect on the environment,” the activity is not subject to CEQA. The enactment of this ordinance will not result in a permanent alteration of the environment or any specific property as there will be no new or expanded structures that will directly or indirectly change the environment.

**SECTION 4:** Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

**SECTION 5:** Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

**INTRODUCED** at a regular meeting of the Cupertino City Council on January 19, 2021 and **ENACTED** at a regular meeting of the Cupertino City Council on February 2, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	_____ Date

## Attachment A – SIDEWALK VENDOR REGULATIONS

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.

Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.

This ordinance amends several portions of the Municipal Code. For ease of review, the amendments advancing the primary objective are presented first followed by conforming amendments. There is a separate heading in bold italics for each portion of the Code being amended. Each portion is shown beginning on a separate page.

### 1. Amendments to Chapter 5.48 concerning Mobile Vendors

#### **CHAPTER 5.48: ~~MOBILE VENDOR PERMITS~~ SIDEWALK VENDORS**

##### **5.48.010 Purpose.**

The purpose of this chapter is to set forth specific regulations to govern the vending of various **food and** goods from locations which are not permanent. It is recognized that such transient operations may have negative ~~land use and traffic~~ impacts which the city desires to minimize through a **permit registration** process.

##### **5.48.020 ~~Mobile Vending Facility Permit Required~~ Definitions.**

**For the purpose of this chapter, the following definitions shall be used in the interpretation and construction of this chapter, unless it is apparent from the context that a different meaning is intended.**

**"Sidewalk vending facility" means a non-motorized conveyance used by a sidewalk vendor. A sidewalk vending facility shall not include any authorized outdoor display associated with an immediately adjacent brick-and-mortar business. A sidewalk vending facility offering food for sale is a food establishment and must additionally comply with the requirements of Chapter 9.04.**

**"Sidewalk vendor" means a person who sells food or goods, but not services, from either a non-motorized conveyance, including but not limited to a pushcart, stand, display, pedal-driven cart, wagon, showcase, or rack, or from one's person, upon a public sidewalk or other pedestrian path.**

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

b. "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location for a defined period of time during the day and removes their mobile vending facility from that location on a daily basis.

5.48.030 Applicability and Exceptions.

A. No person shall place, maintain, conduct, park or allow to stand or remain any mobile sidewalk vending facility, that is, any portable container, pushcart, lunch, meal or eating stand, or wagon used for displaying, selling or offering for sale cut flowers, foodstuffs or other merchandise, food or goods within the city City limits of the City, without first obtaining a mobile vendor permit from the Director of Community Development registering in the City's Mobile Vendor Registry on an annual calendar year basis, pursuant to Section 5.48.030. For purposes of this section, automobiles, trucks 040, except that the regulations in this chapter shall not apply to the exceptions identified in subsection B. below. Any registered sidewalk vending facility operating in compliance with this code is not considered an encroachment pursuant to Chapter 14.08 of the Municipal Code.

B. The registration requirements in subsection A above do not apply to:

1. Persons engaged in delivering food or goods to or from any store, fixed place of business or residence upon order of or by agreement with a customer of a store or other vehicles defined in California Vehicle Code fixed place of business, provided they do not come within the definition of sidewalk vendor;

2. Any persons operating in accordance with Section 670, as amended, shall not be permitted to be used as mobile vending facilities. 5.20 Solicitors, provided they do not come within the definition of sidewalk vendor. Any persons operating as both a sidewalk vendor and a solicitor must satisfy the requirements for both;  
5.48.030 Mobile Vending Facility Permit Procedure.—

A. The Director of Community Development may grant a permit authorizing establishment of a mobile vending permit.

B. Thirty days prior to granting a permit, the Director shall cause the requested mobile vending facility location to be posted, giving notice of the application and the date that the permit will be granted. In addition, written notice thereof shall be delivered to the occupants and property owners of properties within three hundred feet of the vending facility site. Persons wishing to appeal the permit must send a written appeal to the Director of Community Development within the thirty day application period. Upon receipt of a written appeal within the thirty day application period, the director shall cause the appeal to be promptly heard by the Planning Commission, whose decision in the matter shall be final. Sixty days after the application has been submitted, if no written appeal has been filed, all other conditions having been met, the Director shall issue the permit.

~~—C. Each permit issued hereunder shall authorize placement of a mobile vending facility only upon the public sidewalk or paved private property at a location described in such permit. Each permit shall specify the dates for which placement of a mobile vending facility shall be authorized, not exceeding one calendar year, and the names of those companies or persons authorized to exercise it.~~

~~3. —D. Each application for a mobile vending permit~~**Persons engaged in the sale of food or goods as part of Outdoor Sales and Promotional Events, including special events or festivals, regulated by the Outdoor Sales and Promotional Events Policy.**

#### **5.48.040 Registration Process.**

A. **Process: Registration** shall be on forms provided by the ~~Director of Community Development, shall be~~**City Manager or his or her designee**, accompanied by ~~an application~~**a valid Cupertino business license and a registration** fee established by the City Council, ~~shall be signed by the property owner if requesting a private property location, and shall~~**and** include the following:

**1. The names**~~name~~ **and addresses**~~address~~ **of each person**~~the applicant, and~~ **additionally, if the applicant is an agent, the name and address of the principal,** who will ~~occupy~~**operate** the ~~mobile~~**sidewalk** vending ~~location~~**facility**;

**2. A copy of the applicant's, and, additionally, if the applicant is an agent, the principal's, California driver's license or identification number, an individual taxpayer identification number, or a social security number. Such information shall not be available to the public for purposes of exercising the permit; inspection, is confidential, and shall not be disclosed except as required to administer the registration or comply with a state law or state or federal court order;**

**23.** A certificate of insurance with policy limits set by the City **Manager**, naming the City as an additional insured ~~when the vending facility will be located on public property~~, and stating the insurer's name, policy terms and principal amounts (combined single limit) of a policy of insurance against general liability, bodily injury, and property damage arising from the permitted activity. The City shall provide all insurance forms. Each such policy shall be amendable only upon thirty days' advance written notice to the city;

~~3. — Plans for the proposed vending facility showing both the proposed site of the facility and the construction of the facility; and~~**4. A description of the proposed business – including but not limited to a description of the food and/or goods being provided, type of vendor, hours of operation, days of the week, routes of operation, and the location of stationary vending facilities, if applicable;**

~~45. Plans indicating the size of the sidewalk vending facility. If deemed appropriate by the City Manager or his or her designee, photographs with dimensions may be accepted, in lieu thereof;~~



6. A copy of a valid California Department of Tax and Fee Administration seller's permit, as required;

7. A copy of all required permits/approvals from the Santa Clara County Public Health Department, if selling food;

8. An agreement to indemnify the City from any damage or harm on a form provided by the City; and

9. Such additional information as may be required by the Director.

~~E. The Director of Community Development shall grant mobile vending permits based upon the information contained in the application, public records, and/or the recommendations of departmental staff, when they indicate City Manager or his or her designee to ensure that the sidewalk vendor is operating in compliance with all of the provisions of this chapter, and it appears that no undue traffic safety, litter or parking consequences would result from exercise thereof. Should the Director of Community Development deny the permit, the applicant may submit a written appeal pursuant to Section 1.16.020 of this code the requirements of the Cupertino Municipal Code.~~

~~B. F. Fee: The permits sidewalk vendor shall become effective upon issuance pay an annual registration fee prescribed by City Council resolution, no part of which shall be returnable to the registrant.~~

~~C. Term of Registration: Registration shall be on a Cupertino calendar-year basis and must be renewed annually. Registration is non-transferable.~~

D. Registration:

1. The sidewalk vendor shall be registered in the Mobile Vendor Registry within thirty days of receiving a registration request, if it is determined that:

a. The registration is complete with all required information and the proposed business license, in addition to any complies with all requirements of this chapter and other applicable sanitation, requirements of the Cupertino Municipal Code; and

b. The sidewalk vending activity will not unduly interfere with traffic or pedestrian movement, interfere with or endanger the public peace, be a public nuisance, or otherwise be detrimental to the health or, safety permits. Permits shall require compliance with all applicable municipal code provisions and, and general welfare of the public; and

a.c. The sidewalk vending facility and activities comply with applicable health and sanitation requirements.; and

d. G. The DirectorThe sidewalk vending activity will not cause a violation of the American with Disabilities Act of 1990 (Public Law 101-336) or other disability access standards; and

e. The sidewalk vendor has not had four (4) or more violations of the Cupertino Municipal Code within the last twelve (12) months from registration submittal related to any sidewalk vending facility or activity.

f. As used in this subsection D, the term “violation” shall mean any violation of the Cupertino Municipal Code, as evidenced by a City-issued citation, unresolved notice of violation, unresolved cease-and-desist order, or other appropriate documentation. Each unique violation of the Cupertino Municipal Code shall constitute one (1) violation.

2. The City Manager or his or her designee may attach such additional conditions to the permitregistration as may be needed to fulfill the intent of this section.

**5.48.040 Mobile Vending Facility Permit Fees.**

~~—A. Each applicant for a vending permit shall pay to the City a nonrefundable application fee which shall be set by action of the City Council.~~

~~—B. Each vendor granted a vending permit shall pay to the City an annual permit fee which shall be set by action of the City Council.~~

**5.48.050 Mobile Vendors Prohibited Locations.**

~~—Notwithstanding the terms of any mobile vending permit, no person~~ No sidewalk vendor shall place, maintain, conduct, park or allow to stand or remain any ~~portable container, vehicle, pushcart, eating stand, wagon or car used in selling, vending, peddling, bartering or exchanging any goods, flowers or foodstuffs~~sidewalk vending facility, in any of the following places within the city:

~~A. In any R1 (Single Family Residential) or RIC (Single Family Residential Cluster) zoning districts;~~

A. In any natural, dirt, sand, or grass area, or any programmed space for recreation, such as sports courts, tot lots, and amphitheaters, within any City park;

B. In or upon any street (curb to curb) or center median strip, excluding sidewalks ;

~~C. Upon any sidewalk or private property within ten feet of any bicycle lane designated by this code;~~

~~D.C. Upon any sidewalk within ten feet of any “no parking” zone designated pursuant to the provisions of Title 11, during the times when such parking prohibition is in effect~~ or upon any private property within twenty five feet of any designated fire

lane unless specifically allowed by the Director of Community Development in connection with a mobile vendor permit;

~~E. Within any one hundred foot corner triangle;~~

~~F. On any private property which contains fewer parking spaces than the minimum number required by this code, regardless of whether the property has a variance or legal nonconforming status;~~

~~D. G. Within fifteen feet of any fire hydrant or public safety alarm box, or driveway within any one hundred foot corner triangles at any intersection pursuant to Public Works Standard Details 7-4 or any driveway clearance triangle pursuant to Public Works Standard Details 7-6;~~

~~E. H. Within ~~one hundred feet of~~ twenty five feet of any public transit bus stop sign;~~

~~I. At, or any location on private property valet loading zone, taxicab stand, or other designated loading zone, to ensure open pedestrian pathways and adequate room for persons to enter and exit loading vehicles;~~

~~F. On any sidewalk separated from the ~~public right-of-way~~ street by landscaping ~~or vegetation~~, unless reasonable precautions are taken ~~or improvements installed sufficient~~ to protect such landscaping from ~~damage or~~ destruction by sidewalk vending facility customers;~~

~~J. G. Within ~~three hundred~~ twenty feet of another ~~mobile~~ sidewalk vendor, ~~except where separated by a public street with four or more moving lanes;~~~~

~~K. H. Within five hundred feet of ~~the nearest property line~~ a public or private school. This prohibition applies during school hours (when classes are in session) and one hour before and after such school hours. For purposes of this prohibition, distance will be measured along ~~any public street~~ the pedestrian path or sidewalk, upon which is located a public school building or park; L. Mobile vendor facilities legally in operation at to the time of enactment of this chapter and not in violation of any other provision of the municipal code are exempt from the provisions of this section for two years school property line.~~

#### **5.48.060 Mobile Vendors—Exceptions.**

~~—A. This chapter shall not apply to any person engaged in delivering merchandise from or to any store, fixed place of business or residence upon order of or by agreement with a customer of a store or other fixed place of business;~~

~~—B. This chapter shall not apply to vehicles or trucks used for catering or vending prepared foodstuffs and located upon private property at the invitation of the property owner, solely for the use of the owner or owner's tenants or employees;~~

~~—C. This chapter shall not apply to special events or festivals where prohibited locations are devoted exclusively to that use and where the events are regulated by the Outdoor Sales and Promotional Events Policy.~~

~~**5.48.070 Mobile Vendors Parking Limited to Location in Permit.**~~

~~—Whenever any permit is granted under the provisions of this chapter and a particular location to park or stand any vehicle or wagon is specified therein, no person shall park or stand any vehicle or wagon on any location other than as designed in such permit.~~

~~**5.48.080 Mobile Vendors General Regulations.**~~

~~A.—The following **Table 5.48.060A below indicates the operation** regulations are applicable to for sidewalk vendors with vending permits:~~

~~A. Size of Vending Facility. Vending stands shall not exceed eight feet in length and five feet in width or height. Umbrellas or canopies open on four sides are permitted, but shall not exceed eight feet in height measured from grade.~~

~~B. Signage. No mobile vending facility shall display any sign, flag, banner, whether attached or on a separate structure, except such signs as may be painted on the sides thereof, provided that no signs exceed five feet in height or width.~~

~~C. Hours of Operation. It is unlawful for vendors to engage in the business of vending between the hours of 8:00 p.m. and 7:00 a.m. Vendors may request from the city a temporary exception to the usual hours of operation for special events. All vending stands must be removed from public property during nonoperating hours.~~

~~D. Trash. All vendors must provide at least one trash receptacle. All litter at the permit location must be removed by the vendor.~~

~~E. Noise. No vendor may use any device which produces loud sounds to attract public attention including loudspeakers, horns, bells, musical instruments, voice amplification or shouting.~~

~~F. Glass Containers. Vendors are not permitted to sell or dispense items of food or drink in glass containers which would be carried away by the customer after purchase.~~

~~G. Obstruction of Pedestrian Traffic. A four foot width of sidewalk must be kept clear at all times. No vendor shall in any way impede or obstruct pedestrian traffic.~~

<b><u>TABLE 5.48.060A: Operation Regulations for Sidewalk Vendors</u></b>		
	<b><u>Allowed Locations</u></b>	<b><u>Allowed Hours</u></b>
<b><u>1. Stationary</u></b>	<b><u>a. All sidewalks except in exclusively residential zones and pursuant to standards provided in table 5.48.060B.</u></b>	<b><u>7 AM – 11 PM</u></b>

<u>TABLE 5.48.060A: Operation Regulations for Sidewalk Vendors</u>		
	<u>Allowed Locations</u>	<u>Allowed Hours</u>
	<u>b. All parks except if the park has an exclusive concessions contract with another party and pursuant to standards in Table 5.48.060B.</u>	<u>Parks – Open hours for park</u>
<u>2. Roaming</u>	<u>a. All sidewalks pursuant to standards provided in Table 5.48.060B. See subsection b. for sidewalks in parks.</u>	<ul style="list-style-type: none"> <li>▪ <u>Exclusively residential zones – 9 AM – 8 PM;</u></li> <li>▪ <u>All other zones except exclusively residential zones and parks – 7 AM – 11 PM;</u></li> <li><u>and</u></li> <li>▪ <u>Total duration at any location limited to the duration required to complete a transaction, up to a maximum of 15 minutes.</u></li> </ul>
	<u>b. All parks, regardless of whether the park has an exclusive concessions contract with another party, and pursuant to the standards in Table 5.48.060B.</u>	<ul style="list-style-type: none"> <li>▪ <u>Open hours for park</u></li> <li><u>and</u></li> <li>▪ <u>Total duration at any location limited to the duration required to complete a transaction, up to a maximum of 15 minutes.</u></li> </ul>

B. The following table 5.48.060B indicates the standards that must be adhered to by all sidewalk vending facilities and vendors:

<u>TABLE 5.48.060B: Standards for Sidewalk Vendors</u>	
<u>1. Size</u>	<p><u>a. Vending area: Maximum nine feet in length and nine feet in width, subject to compliance with section 5.48.060B.9, to accommodate any allowed appurtenances, as follows:</u></p> <ul style="list-style-type: none"> <li><u>i. Vending facility: Maximum eight feet in length and five feet in width and height.</u></li> <li><u>ii. Umbrella or canopy: Maximum one; open on four sides, not to exceed eight feet in height measured from grade.</u></li> </ul>

**TABLE 5.48.060B: Standards for Sidewalk Vendors**

<b><u>2. Direct retail sales only</u></b>	<b><u>Sidewalk vending facilities that operate solely for cooking (e.g. mobile kitchens) or production of goods and services, do not vend or offer direct on-site sales, and rely solely on delivery are not allowed.</u></b>
<b><u>3. Signage</u></b>	<b><u>No sidewalk vending facility shall display any sign, flag, banner, whether attached or on a separate structure, except such signs as may be painted on the sides thereof.</u></b>
<b><u>4. Waste</u></b>	<b><u>a. Sidewalk vendors shall provide at least one trash receptacle.</u> <u>b. All litter associated with the sidewalk vending facility shall be removed promptly by the vendor at the end of service or the end of the day.</u> <u>c. Sidewalk vendors shall comply with the requirements of Chapter 6.24 related to mandatory organic waste recycling.</u> <u>d. Sidewalk vendors shall comply with the requirements of Chapter 9.18 related to stormwater pollution prevention and the unlawful discharge of waste in such a manner as to constitute a threatened discharge into storm drains, gutters, or watercourses.</u> <u>e. No sidewalk vendor shall use any publicly available trash receptacles to empty trash from the sidewalk vending facility.</u></b>
<b><u>5. Noise</u></b>	<b><u>No sidewalk vendor may use any device which produces loud sounds to attract public attention including loudspeakers, horns, bells, musical instruments, voice amplification or shouting and shall comply with the requirements of Chapter 10.48.</u></b>
<b><u>6. Smoke</u></b>	<b><u>Sidewalk vendors shall ensure compliance with requirements of Chapter 10.90 related to smoking in Outdoor Dining Areas as defined.</u></b>
<b><u>7. Single use plastic bags</u></b>	<b><u>Sidewalk vendors shall comply with the requirements of Chapter 9.17.</u></b>
<b><u>8. Food service ware</u></b>	<b><u>a. Sidewalk vendors shall comply with the requirements of Chapter 9.15 for all food service ware.</u> <u>b. Sidewalk vendors are not permitted to sell or dispense items of food or drink in glass containers which would be carried away by the customer after purchase.</u></b>
<b><u>9. Obstruction of traffic</u></b>	<b><u>a. Sidewalk vendors shall not impair the free flow of traffic on the sidewalk. At least one-half (½) of the sidewalk width, but no less than four (4) feet, shall be kept unobstructed at all times. No lines, banners, ties, or any part of a sidewalk vending facility shall be connected to a public or private structure.</u></b>



**TABLE 5.48.060B: Standards for Sidewalk Vendors**

<p><b><u>10. Condition of facilities and vicinity</u></b></p>	<p><b><u>a. Each sidewalk vendor shall maintain a clean selling area. Each vending area must be cleared of all merchandise, stands, carts, or other items which belong to, or are used by, the vendor when not in use by the vendor.</u></b></p> <p><b><u>b. All sidewalk vending facilities must be removed daily during non-operating hours.</u></b></p>
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**5.48.090 070 Mobile Vending Facility Permit – Revocation or Suspension of Registration.**

~~If the Director of Community Development finds that any mobile vending facility has been erected, altered, relocated or maintained in violation of any provision of this chapter or any other relevant ordinance of the city, the permit may be revoked or suspended by the Director, after notice and hearing.~~

**A. ~~The~~ The City Manager, or his or her designee, may revoke the sidewalk vendor’s registration after notice and hearing, as provided for in this subsection for the following reasons:**

- 1. That the registration was obtained by misrepresentation, false statement or fraud;**
- 2. That the sidewalk vending activity is being conducted in violation of local or state law;**
- 3. That the sidewalk vendor has violated the regulations of this Chapter four (4) times within the preceding twelve (12) months; or**
- 4. That the sidewalk vending activity has caused or is causing a serious threat to human health or public safety.**

**As used in this subsection (A), the term “violation” shall mean any violation of the Cupertino Municipal Code, as evidenced by a City-issued citation, unresolved notice shall fix a time and place, not less than five, or more than thirty days after service thereof, at which time the holder of the permit may appear before the Director of Community Development and be granted a hearing upon the merits of such of violation, unresolved cease-and-desist order, or other appropriate documentation. Each unique violation of the Cupertino Municipal Code shall constitute one (1) violation.**

**B. Process: In any case where substantial evidence indicates that the conditions in Section 5.08.070A exist, revocation proceedings shall occur as follows:**

1. The City Manager, or his or her designee, may issue either a notice of pending revocation or a notice of suspension or revocation. If pending revocation, the latter of which shall require immediate suspension of all sidewalk vending activity pending a final determination regarding revocation. Any notice of suspension shall explain why the sidewalk vending activity presents an immediate, serious threat to human health or public safety. The notice shall detail the grounds for potential revocation of the registration and allow thirty calendar (30) days for submission of a written statement and/or supporting documentation disputing such grounds.

2. The determination on the revocation by the City Manager, or his or her designee, shall be made not more than thirty calendar (30) days after the deadline for submittal of documentation provided on the notice. The determination shall be mailed to the sidewalk vendor.

3. All notices and determinations of the City Manager, or his or her designee, shall be mailed to the sidewalk vendor.

4. The City Manager, or his or her designee, is authorized to issue administrative guidelines to further define procedures for making revocation determinations.

C. Appeals: If after such hearing the registration is ordered revoked, the holder/sidewalk vendor shall have the right to appeal pursuant to Section 1.16.020 of this code, the decision as follows:

1. The appellant must file a notice of appeal with the City Clerk within fourteen (14) calendar days of the date of the revocation decision.

2. The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager or his or her designee no more than thirty (30) calendar days from the receipt of the appeal.

3. The appellant shall be served with notice of the time and place of hearing, as well as any relevant materials, at least seven calendar days prior to the hearing.

4. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party and the City Manager or his or her designee may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

5. Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within a reasonable time after the conclusion of the hearing and shall state the



reasons for the decision. The notice shall be mailed to the sidewalk vendor, and if said vendor is an agent, the notice shall additionally be mailed to the principal. The notice shall specify that the decision is final and subject only to judicial review in accordance with law.

A.D. Upon receiving notice of final action by the City in revoking ~~or suspending~~ the ~~permit~~registration, the ~~permit~~registration holder shall immediately cease operations and remove his or her mobile vending facility from the previously approved ~~location~~within the City.

B.E. Notwithstanding the above, if the ~~Director~~City Manager or his or her designee finds that any ~~mobile~~sidewalk vending facility, whether conforming with this chapter or not, is an immediate peril or menace to the public, or to any person, the ~~Director~~City Manager or his or her designee may order the owner to immediately cease operations and remove the facility.

5.48.100 Penalty~~080 Code Enforcement and Penalties.~~

Any person who violates the provisions of this chapter shall be ~~guilty of an infraction and upon conviction thereof shall be~~ punished as provided in Chapter 1.12-, except as limited by Govt. Code Section 51039.

*2. Amendments to Section 5.04.290 concerning Agents, Solicitors and Salespersons*

**5.04.290 ~~Agents, Solicitors and Salespersons.~~**

~~Each agent, Every solicitor, and salesperson selling or soliciting, or taking orders for the sale or furnishing of any paintings, pictures, portraits, photographs, orders for advertising or for any goods, wares, merchandise or service at retail, not otherwise provided herein when not defined in connection with any fixed place of business within the City licensed under this chapter~~ **Chapter 5.20 of this code**, shall pay a business license tax of seventy-five dollars. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.

*3. Amendments to Section 5.04.400 concerning Peddling*

**5.04.400 ~~Peddling~~Sidewalk Vendor.**

~~Every person peddling any goods, food, wares, magazines, or merchandise not otherwise provided for in this chapter~~**Every sidewalk vendor within the City, as defined in Chapter 5.48 of this code**, shall pay a business license tax of one hundred fifty dollars per year. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.

#### 4. Amendments to Chapter 5.20 Solicitors in Sections 5.20.010 and 5.20.015

##### 5.20.010 Definitions.

For the purposes of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section:

“Solicitor” means any person, including salesman and vendor, who engages in the business of going from house to house, place of business to place of business, or to any one house or to any one place, ~~or in or along the streets~~ of business, within the City, selling not at the request or taking invitation of the occupant thereof, to sell or take orders for, or offering to sell or take orders for ~~goods or offering for,~~ immediate or future delivery of, goods, wares, merchandise, services, or other things of value, to persons other than manufacturers, wholesalers, jobbers, or retailers in such commodities or services. Sidewalk vendors operating as described in Chapter 5.48 do not come within the definition of solicitor provided they operate solely on a public sidewalk or other pedestrian path, not on private property.

##### 5.20.015 Exemption.

The provisions of this chapter shall not apply to ~~any~~:

A. Any person soliciting on behalf of any religious, charitable, educational, or political organization or to any person who is exempt from the provisions of this chapter by virtue of the Constitution or statutes of the United States of America or of the state.

B. Any persons operating in accordance with Section 5.48, Sidewalk Vendors, provided they do not come within the definition of solicitor. Any persons operating as both a sidewalk vendor and a solicitor must satisfy the requirements for both.

**6. Amendments to Section 13.04.180 concerning Vending in Parks**

**13.04.180 Advertising and Sale Restrictions.**

A. ~~No~~**Unless in compliance with Chapter 5.48, no** person in a park shall, without prior permission from the City Council, do any of the following:

1. Expose or offer for sale any article or thing, nor shall he station or place any stand, cart or vehicle for the transportation, sale or display of any such article or thing;
2. Announce, advertise or call the public attention in any way to any article or service for sale or hire;
3. Paste, glue, tack or otherwise post any sign, placard, advertisement or inscription.

B. In addition, in order to insure the public safety, health and general welfare, **unless in compliance with Chapter 5.48,** no person shall expose or offer for sale any article or thing, nor shall he station or place any stand, cart or vehicle for the sale or display of any article or thing, on a public street, within five hundred feet in a straight line from the nearest boundary of any park.