

ORDINANCE NO. 827

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COALINGA, CALIFORNIA ADDING COALINGA MUNICIPAL CODE SECTION 9-5.130 "SIDEWALK VENDORS" AND AMENDING ARTICLE 2 CHAPTER 1 OF TITLE 9 "DEFINITIONS" RELATED TO SIDEWALK VENDORS AND MOBILE VENDING.

WHEREAS, on September 17, 2018, Governor Brown signed Senate Bill No. 946 ("SB 946), adding sections 51036-51039 to the Government Code; and

WHEREAS, SB 946 decriminalizes sidewalk vending and limits local regulations to those expressly provided for in the bill or are otherwise "directly related to objective health, safety, or welfare concerns"; and

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

WHEREAS, although Coalinga's Municipal Code does not regulate "sidewalk vendors", as that term is defined in SB 946, it does regulate "mobile vendors" (CMC 9-5.116), which will be amended, and a new section created to address sidewalk vendors; and

WHEREAS, the City desires to adopt a sidewalk vending ordinance to address sidewalk vendors and amend its mobile vendor ordinance to ensure compliance with state law; and

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

SECTION 1. The City Council finds that all the facts, findings, and conclusions set forth above in this Ordinance are true and correct.

SECTION 2. The Council hereby finds and determines that there is no possibility the adoption of a sidewalk vending ordinance and the amendment to its peddling ordinance will have a significant effect on the environment. Accordingly, under the provisions of § 15061 (b)(3) and § 15378(b)(5) of Division 6 of Title 14 of the California Code of Regulations, the CEQA Guidelines, the adoption of this ordinance is not subject to the requirements of the California Environmental Quality Act.

SECTION 3. The City Council hereby amends the following definition in Article 2 of Chapter 1 in Title 9 the Coalinga Municipal Code to read as follows:

Mobile vendor. Any person that sells, or causes or allows another, whether as an employee or as an independent contractor leasing or renting equipment, to sell any food, drinks or merchandise on any street, or alley, by means of automobile, truck or any other registered vehicle or vessel. This does not include vendors vending from a public sidewalk (See Sidewalk Vendors Section 9-5.130). Mobile vendors must obtain a business license from the City of Coalinga prior to the start of business operations. Mobile Vendor shall not mean any person operating under a concession agreement or other agreement with the city as a party to the agreement. A mobile vendor is different from a peddler, who visits private residences to sell goods, as defined and regulated in Title 5, Chapter 9 of the Coalinga Municipal Code.

Mobile vendor vehicle. An automobile, truck or any other registered vehicle or vessel used by mobile vendors to sell their food, drinks or merchandise. Mobile vendor vehicle shall not include delivery vehicles used to transport food or drink from a store having a valid food permit to a customer's home or a vehicle transporting food or drink from a wholesale establishment to a retail outlet.

SECTION 4. The City Council hereby adds the following terms to Article 2 of Chapter 1 in Title 9 of the Coalinga Municipal Code to read as follows:

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

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

"Sidewalk vendor, stationary" means a sidewalk vendor who vends from a fixed location.

SECTION 5. The City Council hereby adds Section 9-5.130 to Article 2 of Chapter 1 in Title 9 of the Coalinga Municipal Code to read as follows:

9-5.130. - Sidewalk Vendors

- (a). Only sidewalk vendors with a valid sidewalk vending permit issued by the Finance Department may vend upon the city's public right-of-way. To apply for a sidewalk vending permit, the applicant must submit an application containing the following information:
1. Their name and mailing address;
 2. Description of the merchandise offered for sale or exchange;
 3. 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; and
 4. Certification that the information is true to his or her knowledge and belief.
 5. A copy of a California's driver's license or identification number, an individual taxpayer identification number, or a social security number. Such information is not a public record and will remain confidential as required by Government Code section 51038(c)(4).
 6. A copy of a valid California Department of Tax and Fee Administration seller's permit, as required.
 7. A copy of a valid Mobile Food Permit issued by the Fresno County Department of Public Health, as required.
 8. The sidewalk vending permit application shall require the applicant to agree, in writing, to comply with all the provisions of this chapter and all applicable provisions of the Coalinga Municipal Code.
 9. Payment of a business license fee established by resolution by the City Council and not to exceed the cost of a general business license application.
- (b). Permit Exemption - The following persons, entities or activities are exempt from the permit requirement of this chapter:

1. Any vendor or person engaged solely in artistic performances, free speech and/or petitioning activities;
2. Nonprofit educational institutions, fraternal and service clubs, bona fide religious organizations, lemonade stands, and agencies of any federal, state or local governments;
3. Nonprofit private clubs where a basic membership fee covers the cost of the use of the facilities;
4. Community organizations/events not otherwise regulated by the Coalinga Municipal Code, upon approval of the City Manager or designee;
5. Businesses and trades that are exempt from licensing and tax regulations under federal and state statutes;
6. Any organization, society, association or corporation desiring to solicit or have solicited in its name money, donations of money or property or financial assistance of any kind or desiring to sell or distribute any item of literature or merchandise to persons other than members of such organization upon the streets, in office or business buildings, by house-to-house canvass or in public places for charitable, religious, patriotic or philanthropic purpose exclusively.

(c). General Regulations.

1. To maintain accessibility path of travel standards as prescribed by State and Federal Law
2. To prevent dangerous distractions and promote the general welfare of the city's residents, sidewalk vendors shall not emit any loud, unnecessary and unusual noises beyond that of a typical use in the surrounding area.
3. A sidewalk vending permit does not provide an exclusive right to operate within any specific portion of the public right-of-way.
4. No equipment or objects used for sidewalk vending purposes may be left or maintained in public spaces or in any portion of the public right-of-way from 10:00 p.m. to 8:00 a.m. Any equipment or objects left overnight in public spaces or in any portion of the public right-of-way will be considered discarded and may be seized or disposed of by the city.
5. To facilitate the enforcement of this chapter, every sidewalk vendor must display their city-issued sidewalk vending permit on the street-side 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.
6. To prevent unintended rolling or slipping, a sidewalk vendor is prohibited from operating a pushcart, pedal-driven cart, wagon, or other non-motorized conveyance on a public-right-of-way with a slope greater than five percent.

(d). Specific Regulations.

1. 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.
2. Roaming sidewalk vendors are limited from dawn until dusk in areas that are zoned exclusively residential. Stationary sidewalk vendors are strictly prohibited in areas zoned exclusively residential.

3. 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.

(e). Violation Penalty.

1. If a permitted street vendor is in violation of any provision of this chapter is guilty of an administrative violation punishable by an administrative fine not to exceed:
 - i. One hundred dollars (\$100.00) for a first violation; or
 - ii. Two hundred dollars (\$200.00) for a second violation within one year of the first violation; or
 - iii. Five hundred dollars (\$500.00) for each additional violation within one year of the first violation.
2. Any person vending without a sidewalk vending 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; or
 - ii. Five hundred dollars (\$500.00) for a second violation within one year of the first violation; or
 - iii. One thousand dollars (\$1,000.00) for each additional violation within one year of the first violation.
 - iv. Upon proof of a valid permit issued by the City, the administrative fine in Section 9-5.130(e)(2) will be reduced to the corresponding administrative fine in Section 9-5.130(e)(1).
3. The City may rescind a sidewalk vendor permit for the remaining term of the permit upon a fourth or subsequent violation of this chapter.
4. Failure to pay an administrative fine is not punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized will not be assessed. However, the City may levy a lien on the violator's real or personal property, including the vehicle used for vending purposes.
5. An administrative violation constitutes a separate and distinct violation for each day that it exist and each such violation may be subject to the maximum fine permitted under this chapter.

(f). Ability to Pay Determination.

1. Any fine issued under Section 9-5.130 will be accompanied with a notice of and instruction regarding the right to request an ability-to-pay determination.
2. If the requestor is receiving public benefits under Government Code section 68632, subdivision (a), or has a monthly income which is 125 percent or less than the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services, the City will limit the total amount of the requestor's administrative fine to 20 percent of the total.

SECTION 6. Severability Clause:

Should any section, clause, or provision of this Ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

SECTION 7. Effective Date:

This Ordinance shall take effect 30 days after its passage and adoption pursuant to California Government Code Section 36937 and shall supersede any conflicting provision of any City of Coalinga ordinance.

SECTION 8. Certification:

The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published or posted according to law.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2019.

Ron Lander, Mayor

ATTEST:

Shannon Jensen, City Clerk

APPROVED AS TO FORM:

Mario U. Zamora, City Attorney