

ORDINANCE NO. 678

AN ORDINANCE OF THE CITY OF FOSTER CITY AMENDING VARIOUS SECTIONS OF CHAPTERS 12.08, 12.12, 12.16 AND 12.36 WITHIN TITLE 12, "PUBLIC PROPERTY" MAKING REVISIONS TO AUTHORIZE ADMINISTRATIVE CITATIONS TO BE ISSUED FOR VIOLATIONS AND OTHER ADMINISTRATIVE CHANGES TO RESERVATION PROCESS AND USE OF PARKS AND ADDING A NEW CHAPTER 12.44, "SIDEWALK VENDING PROGRAM" TO ESTABLISH LOCATIONS AND REGULATIONS APPLICABLE TO SIDEWALK VENDORS

CITY OF FOSTER CITY

The City Council of the City of Foster City does **ORDAIN** as follows:

SECTION 1. Sections 12.08.010, 12.08.040, 12.08.060, 12.08.070 and 12.08.080 of Chapter 12.08, "Definitions" within Title 12, "Public Property" of the Foster City Municipal Code is hereby repealed and replaced to read in its entirety and section 12.08.090 is added to read as follows:

"12.08.010 Definitions generally.

The words and phrases set forth in Sections 12.08.020 through 12.08.090 whenever used in Chapters 12.04 through 12.36 shall be construed as defined in this chapter.

12.08.040 Director of parks and recreation.

"Director of parks and recreation" refers to the managing director of the department of parks and recreation or their designee."

12.08.060 Motorized Food Truck.

"Motorized Food Truck" means any motorized vehicle from which food or food products are sold, offered for sale, displayed, bartered, exchanged, or otherwise given.

12.08.070 Parks.

"Parks" includes all grounds, roadways, avenues, parks, waterways, beaches and dikes under the supervision of the department of parks and recreation.

12.08.080 Permit.

"Permit" means a permit for exclusive use of parks or buildings as provided for and defined in Chapters 12.04 through 12.36.

12.08.090 Persons.

“Persons” includes persons, associations, partnerships, firms or corporations.”

All other sections within Chapter 12.08 not specifically amended herein shall remain unchanged.

SECTION 2. Sections 12.12.050 and 12.12.060 of Chapter 12.12, “Administration and Enforcement” within Title 12, “Public Property” of the Foster City Municipal Code are hereby repealed and replaced to read in their entirety as follows:

“12.12.050 Enforcement.

The director and chief of police, or their authorized representative, including any designated city code enforcement officer or safety officer, shall diligently enforce the provisions of Chapters 12.04 through 12.36, and shall have the authority to eject from any park or community building any person acting in violation of these rules and regulations in this Title; further, the Chief of Police, or their authorized representative, or any designated city code enforcement officer or safety officer shall have the authority to issue administrative citations pursuant to section 1.08.060, deny use of parks or community buildings, eject persons, and close parks and recreation buildings to individuals or groups who refuse to comply with these rules and regulations.

12.12.060 Violation—Penalty.

All persons entering parks or community buildings shall abide by the rules and regulations of the City, as provided in Chapters 12.04 through 12.36, and the instructions and directions of duly authorized employees of the City.

Any person violating, or any person, firm or corporation causing or permitting to be violated, any provision of Chapters 12.04 through 12.36 is guilty of a misdemeanor and upon conviction thereof is punishable by a fine not to exceed one hundred dollars or by imprisonment in the county jail for not to exceed one month, or both. Violations of Chapters 12.04 and 12.36 may also be subject to an administrative citation pursuant to section 1.08.060 and additionally shall be subject to any applicable federal, state, county or municipal statutes and the penalties imposed therein.”

All other sections within Chapter 12.12 not specifically amended herein shall remain unchanged.

SECTION 3. Sections 12.16.170 and 12.16.180 of Chapter 12.16, “Park Use” within Title 12, “Public Property” of the Foster City Municipal Code are hereby repealed and replaced to read in their entirety as follows:

“12.16.170 Permit—Decision appeal.

A request for use permit may be rejected without cause by the Director. Any applicant who does not agree with the determination of the Director or an applicant who does not agree with the classification given or service charge assessed shall have the right of appeal to the City Council pursuant to Section 12.12.010. The decision of the City Council shall be final.

12.16.180 Reservations.

A. Reservations for community parks use pursuant to Classifications C, D, E and F in Section 12.16.090 may be superseded at any time by uses pursuant to Classifications A and B in Section 12.16.090, unless otherwise determined by the Director.

B. Reservations for community parks use pursuant to Classifications D, E and F may be superseded by uses pursuant to Classification C provided that the C-use permit is issued at least thirty days prior to the reserved use, unless otherwise determined by the Director.

C. The Director may exercise their discretion to utilize a different priority for the Classifications identified in Section 12.16.090 when necessary to ensure that community park use is available to all Classifications in an equitable manner.”

All other sections within Chapter 12.16 not specifically amended herein shall remain unchanged.

SECTION 4. Sections 12.36.010, 12.36.020 and 12.36.030 of Chapter 12.36, “General Park and Building Rules and Regulations” within Title 12, “Public Property” of the Foster City Municipal Code are hereby repealed and replaced to read in their entirety as follows; and a new Section 12.36.190, “Enforcement” and Section 12.36.200, “Other Rules” is hereby added to Chapter 12.36, “General Park and Building Rules and Regulations” within Title 12, “Public Property” of the Foster City Municipal Code to read as follows:

“12.36.010 Transaction of Business.

Any person carrying on or transacting any business in the park shall comply with the business license and tax requirements of Article I of Title 5 of this Code.

12.36.020 Sidewalk Vending and Motorized Food Truck.

A. A sidewalk vendor, as that term is defined in Chapter 12.44, may operate in parks in accordance with the provisions of Chapter 12.44 of this Code.

B. Any Motorized Food Truck may operate on park grounds in a specified location or in a designated parking area for special events as authorized by the Director.

12.36.030 Posting of Handbills, Circulars, Pamphlets, Papers and Advertisements.

It is unlawful for any person to post or affix handbills, circulars, pamphlets, papers, advertisements to any tree, fence or structure in any park or community building without the expressed written consent of the Director.

[...]

12.36.190. Enforcement.

Enforcement of this Chapter shall be in accordance with Chapter 12.12.

12.36.200. Other Rules.

The Director may from time to time adopt other rules as necessary for the safe and efficient use of parks and buildings. These rules shall be made available to the public through the City’s Parks and Recreation website and/or posted in a public place.”

All other sections within Chapter 12.36 not specifically amended herein shall remain unchanged.

SECTION 5. A new Chapter 12.44, “Sidewalk Vending Program” shall be added to Title 12, “Public Property” to read as follows:

“Chapter 12.44. - Sidewalk Vending Program

12.44.010. Definitions. For the purposes of this chapter, the following definitions shall apply:

“Administrator” means the Community Development Director or designee, or any other City officer charged with administration of the provisions of this Chapter.

“Business license” means the business license issued by the City pursuant to Chapter 5.12 of this Code, which is required to conduct business in the City.

“Cart” means any pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, and includes a stationary cart or a roaming cart.

“California Retail Food Code” means Part 7 of Division 104 of the California Health and Safety Code (commencing at Section 113700).

“County health permit” means any and all licenses, permits, certifications, and courses required and issued by San Mateo County Environmental Health Services Division to vend food within the City in accordance with this chapter.

“Food” means any type of edible substance or beverage.

“Goods” or “merchandise” means any item that is not food.

“Health Department” means the San Mateo County Environmental Health Services Division.

“Person” or “persons” means one or more natural persons, individuals, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs or organizations composed of two (2) or more individuals (or the manager, lessee, agent, servant, officer or employee of any of them), whether engaged in business, nonprofit or any other activity.

“Roaming vending cart” means a pushcart, pedal-driven cart, wagon, or other non-motorized conveyance used by a roaming sidewalk vendor, to be moved from place to place, and with stops only to complete a transaction.

“Roaming sidewalk vendor” has the same meaning as set forth in Government Code section 51036(b), and includes a sidewalk vendor who moves from place to place and stops only to complete a transaction.

“Rules and regulations” means the rules and regulations established by the Administrator and adopted by City Council resolution, concerning the sidewalk vending program that are intended to clarify and aid in the administration and enforcement of this chapter.

Sidewalk means any paved surface in the public right-of-way provided for the use of pedestrians and includes pedestrian paths.

Sidewalk vending means the sale of 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 vending program means the program established by this Chapter that is applicable to sidewalk vending-related activities.

Sidewalk vendor has the same meaning as set forth in Government Code section 51036(a), and includes 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.

“State seller’s permit” means a permit issued by the California Department of Tax and Fee Administration.

“Stationary vending cart” means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, that is intended to be operated from a fixed location by a stationary sidewalk vendor.

“Stationary sidewalk vendor” has the same meaning as set forth in Government Code section 51036(c), and includes a sidewalk vendor who vends from a fixed location.

“Vending permit” means a permit issued by the Administrator to undertake sidewalk vending within the City in accordance with this Chapter.

12.44.020. Purpose.

The purpose of this Chapter is to establish a sidewalk vending program within the city while maintaining objective regulations that are directly related to public health, safety, and welfare. This Chapter does not regulate commercial activity on private property.

12.44.030. Vending Permit Required.

No sidewalk vendor may undertake sidewalk vending within the City without first obtaining a vending permit issued by the Administrator. Sidewalk vendors must comply with the terms and conditions set forth in the vending permit.

12.44.040. Application Requirements.

A. To obtain or to renew a vending permit, a sidewalk vendor must provide the following as part of the application:

1. Valid identification, such as a State of California driver’s license or identification number, an individual taxpayer identification number, or any other government-issued identification card.
2. The name, address and telephone number of the sidewalk vendor.
3. Proposed hours and days of operation.
4. Whether the sidewalk vendor intends to operate a stationary vending cart or a roaming vending cart.
5. Proposed location of operation.
6. The type of merchandise or food offered for sale or exchange.
7. Proof of a valid business license issued pursuant to Article I, Title 5.
8. The application or renewal fee, in an amount established by resolution of the City Council.
9. A valid state seller’s permit and any additional licenses from state or local agencies to the extent required by law.

10. A county health permit for food-related vending, if applicable.
11. A certificate of completion of a food handler course, if applicable.
12. If a cart will be used, a description of the cart including dimensions.
13. A declaration that the information provided to the city is true and correct.
14. Any other information as may be required by the Administrator.

12.44.050. Issuance and Renewal of Vending Permits.

A. A vending permit shall be valid for a period of one (1) year from the date of issuance and shall be renewed annually.

B. Vending permits are not transferable.

C. A person whose vending permit is revoked may not renew their vending permit for one year.

D. In accordance with Government Code section 51038(c)(4), identification numbers, including social security numbers, will be confidential and will not be disclosed.

E. The Administrator may impose conditions of permit issuance as may be necessary to ensure the public health and safety, including but not limited to, requiring an inspection of the cart by the Health Department as a condition of permit issuance.

F. If there is any prior history of violations under this chapter, the Administrator may review any such violations in its review of renewal requests and consider those violations when imposing conditions on a renewal permit.

12.44.060 General Operational Requirements.

A. Every cart used to vend food must be approved by the Health Department. A cart may only vend the types of food that are listed and approved by the Health Department under the County health permit.

B. A cart used for sidewalk vending must obtain, possess, and prominently display a valid vending permit and all other required permits that are issued by other public agencies, such as a county health permit.

C. A cart used for sidewalk vending must be placed and used at all times in compliance with the terms and conditions of the vending permit and all other applicable laws and regulations, including the California Retail Food Code if food is sold.

D. No cart that is used for sidewalk vending may exceed a length of seventy-two (72") inches, a width of fifty-four (54") inches, or a height, including roof or awning, of seventy-eight (78") inches, exclusive of a separate condiment table no larger

than forty-eight (48") inches long and twenty-four (24") inches wide and a trash receptacle no larger than twenty (20) gallons in capacity.

E. A sidewalk vendor must operate according to the approved hours of operation included in the vending permit. The Administrator may impose reasonable hours of operation for sidewalk vendors. For sidewalk vending in nonresidential areas, the Administrator may limit the hours of operation in a manner consistent with other businesses or uses on the same street(s) in those nonresidential areas.

F. No vending cart, condiment table or trash receptacle may be left on the sidewalk after the sidewalk vendor's stated closing time.

G. A sidewalk vendor must maintain a clean and trash-free 20-foot radius from the sidewalk vendor's stationary cart during hours of operation and must leave the area clean by the approved closing time.

H. Sidewalk vendors that vend food items must provide a trash receptacle for customers and must ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash without resorting to existing trash receptacles located on any block for use by the general public.

I. A stationary vending cart that vends food must be operated within two hundred (200') feet of an approved and readily available toilet and handwashing facility. If the toilet and handwashing facility is located on private property, the sidewalk vendor must possess a copy of an enforceable contract between the private property owner and the sidewalk vendor allowing the vendor to utilize such facilities, including the days and hours of operation.

J. Sidewalk vendors must comply with all applicable federal, state, and local laws, regulations, and ordinances.

K. No signs that are not attached to the vending cart may be used or displayed.

L. Sidewalk vendors may not set up tables, chairs, or other structures, unless otherwise approved by the City.

M. Sidewalk vendors may not access a city power source without authorization from the city, nor a private power source without authorization from such private property owner or agent.

N. No sidewalk vendor or vending cart may use any device that produces a loud noise, nor may the vendor use or operate any loud speaker, public address system, radio, sound amplifier, or other similar device.

O. Vending of services is prohibited.

P. Sidewalk vendors shall not vend, set up a vending cart, or otherwise operate, within any marked parking space or stall in any public parking lot, as may be designated with paint or other markings to indicate where parking is permitted.

Q. The City may request a sidewalk vendor remove any cart that is in violation of this chapter. If the sidewalk vendor refuses to remove the cart, or if a cart has been abandoned, the City may cause the cart to be removed and may, after adequate notice, subsequently dispose of the cart (including any associated merchandise and food) if not claimed by the vendor in accordance with the rules and regulations. If the City removes a cart, the City shall not be responsible for maintaining any perishable food products,

12.44.070 Vending in Residential Areas.

A. No stationary vending cart may be used to vend within a residential zoned area.

B. A roaming sidewalk vendor may use a roaming vending cart within a residential zone, and must move continuously except when necessary to complete a sale.

12.44.080 Prohibitions on Placement of Stationary or Roaming Carts.

A. No sidewalk vendor may place or leave any vending cart:

1. Within ten (10') feet of a marked crosswalk or ADA access ramp.
2. Within ten (10') feet of the curb return of an unmarked crosswalk.
3. Within five (5') feet of any fire hydrant.
4. Within five (5') feet ahead and forty-five (45') feet to the rear of a sign designating a bus stop.
5. Within ten (10') feet of a bench or shelter used for public transit.
6. Within five (5') feet of a driveway or driveway apron.
7. Within eighteen (18") inches from the edge of the curb.
8. Within five (5') feet of a public bench.
9. Where placement impedes the flow of vehicular traffic such as on public streets or public highways.

B. No vending cart may be chained or fastened to any utility pole, sign, tree, or other object in the public right-of-way or left unattended at any time.

C. No vending cart may impede the flow of pedestrian traffic by reducing the path of travel to less than four (4') feet, or impede access to or restrict the use of abutting property, including, but not limited to, residences and places of business, in accordance with the Americans with Disabilities Act (ADA).

D. No person shall vend from a human-powered or non-motorized conveyance, such as a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or from one's person, on any roadway (as defined by Vehicle Code section 530) in the City.

E. Notwithstanding any specific regulations in this chapter, no sidewalk vendor may install, use or maintain a vending cart where placement endangers the safety of persons or property.

12.44.080 Sidewalk Vending Prohibited Near Special Events and Other Vendors or Authorized Concessionaires.

A. No sidewalk vending is allowed within three hundred (300') feet of all borders of a city-sponsored or city-permitted temporary or special event, within the time period commencing one hour before until one hour after the event. Such events include any event that requires an encroachment permit or special event permit, or any other permit or authorization issued by the city, including filming events, parades, outdoor concerts, and public gatherings sponsored by the city.

B. No sidewalk vending is allowed within three hundred (300') feet of all borders of a certified farmers' market (operating pursuant to Chapter 10.5 of Division 17 of the Food and Agricultural Code, commencing with Section 47000) or a swap meet (operating pursuant to Article 6 of Chapter 9 of Division 8 of the Business and Professions Code, commencing with Section 21660) during the hours of operation.

C. For the purpose of determining the geographical restrictions set forth in this section, the applicable borders of any temporary or special event, certified farmers' market, or swap meet shall be based on the area of use set forth or otherwise described in the permit or other authorization issued by the City. The Administrator or designee shall maintain a copy of such permits or other authorizations on file, unless expired or revoked, and shall make available such permits or authorizations to sidewalk vendors for inspection upon request. The Administrator or designee shall also provide sidewalk vendors with notice regarding the issuance of temporary or special event permits if such notice is required to be provided to affected business owners or property owners.

D. No sidewalk vendor may vend within twenty-five (25') feet of another sidewalk vendor at any city park.

E. Vendors are prohibited from sidewalk vending in parks and other city facilities that have exclusive, signed concession agreements. The Administrator shall maintain a list of parks and facilities with an exclusive concession agreement and provide a copy of such list with the issuance of any vending permit.

12.44.090 Administration.

The Administrator is authorized to develop, and enforce, the rules and regulations regarding the licensing, permitting, and operation of sidewalk vending, in accordance with this Chapter.

12.44.100 Enforcement.

A. Sidewalk vending in violation of this Chapter will not be punishable as a criminal infraction or misdemeanor, but will be subject to the following enforcement procedures:

1. For the first incident, a written warning will be issued specifying the provision of this Chapter 12.44 that has been violated as well as materials outlining the regulations of this Chapter 12.44 and any other adopted rules and regulations pertaining to sidewalk vending.

2. For the second incident, persons found in violation of this Chapter shall be subject to an Administrative Citation. Administrative citations shall be in the format set forth in Section 1.08.060 of this Code. In conjunction with the issuance of an administrative citation, the city will provide the person subject to administrative citation notice of their right to request an ability-to-pay determination and will make available instructions or other materials for requesting an ability-to-pay determination.

3. For vending without a valid vending permit the following fines shall be applicable:

(i) An administrative fine of two hundred fifty and no/100ths (\$250.00) dollars for a first violation.

(ii) An administrative fine of five hundred and no/100ths (\$500.00) dollars for a second violation within one year of the first violation.

(iii) An administrative fine of one thousand and no/100ths (\$1,000.00) dollars for a third violation and each subsequent violation, within one year of the first violation.

Upon proof of a valid permit issued by the City before such fines are due, the city will reduce the amount of the fines to one hundred and no/100ths (\$100.00) dollars for the first violation, two hundred and no/100ths (\$200.00) dollars for the second violation, and five hundred and no/100ths (\$500.00) dollars for each violation thereafter.

4. For all violations of this chapter other than vending without a valid vending permit as outlined in subsection A above:

(i) An administrative fine of one hundred and no/100ths (\$100.00) dollars for a first violation.

(ii) An administrative fine of two hundred and no/100ths (\$200.00) dollars for a second violation within one year of the first violation.

(iii) An administrative fine of five hundred and no/100ths (\$500.00) dollars for a third violation within one year of the first violation.

(iv) An administrative fine of five hundred and no/100ths (\$500.00) dollars for a fourth and each subsequent violation, and revocation of the vending permit. Revocation proceedings will be conducted in accordance with the rules and regulations established by the city.

C. All administrative citations issued for violations of this chapter and the rules and regulations are subject to the administrative hearing and appeal process set forth under Section 1.08.060(F)-(I) of this Code, except that fines and late charges shall not be imposed under Section 1.08.060(E). Citations shall be served using a method set forth in Section 1.04.100.

D. Fines assessed pursuant to this section shall be reduced to twenty (20%) percent of the original fine amount upon submission of proof of inability to pay at the administrative hearing if requested by the person pursuant to Government Code section 51039(f). Additionally, 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.

E. All administrative fines imposed shall be subject to the city's authority to use any civil remedy available to collect any unpaid administrative fine, including, but not limited to, a collections program. No interest charges, late charges, or other fees shall be imposed for an administrative citation issued as a result of a violation of this Chapter.”

SECTION 6. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or word of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, clause, phrase, or word of this Ordinance.

SECTION 7. CEQA

The Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, et seq. and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et. seq.), including without limitation, Public Resources Code section 21065 and California Code of Regulations 15378 as this is not a “project” that may cause a direct, or reasonably foreseeable indirect, physical change in the environment as this Ordinance only makes administrative changes.

SECTION 8. EFFECTIVE DATE

This ordinance shall become effective thirty days after adoption.

SECTION 9. PUBLICATION

The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Foster City and cause the same to be published in accordance with State law.

This Ordinance was introduced and read on the 15th of April, 2024 and passed and adopted the 6th day of May, 2024, by the following vote:

AYES: Councilmembers Froomin, Hindi, Jimenez, Kiesel, and Mayor Sullivan

NOES: None

ABSENT: None

ABSTAIN: None

DocuSigned by:
Patrick Sullivan
11F9C0DB761345B...
PATRICK SULLIVAN, MAYOR

ATTEST:

DocuSigned by:
Priscilla Schaus
6131E59FA33B4AB...
PRISCILLA SCHAUS, CITY CLERK