

RESOLUTION NO. 2021-048

**A RESOLUTION OF THE BREA CITY COUNCIL ADOPTING AN AMENDED
AND RESTATED SIDEWALK VENDING POLICY**

A. Recitals.

(i) Senate Bill (SB) 946 was signed into law on September 17, 2018, and became effective January 1, 2019.

(ii) SB 946 limits the authority of cities and counties to regulate sidewalk vendors, except in accordance with Government Code Sections 51038 and 51039.

(iii) Based on express, written findings set forth therein, the City Council has adopted the Sidewalk Vending Ordinance (codified in Brea City Code, Chapter 5.244) to regulate and provide for the safe and lawful operations of sidewalk vendors, consistent with SB 946.

(iv) The Sidewalk Vending Ordinance requires all persons engaged in sidewalk vending to possess a sidewalk vending permit and comply with a Sidewalk Vending Policy adopted by City Council resolution.

(v) On September 17, 2019, the City Council passed Resolution No. 2019-055 adopting a Sidewalk Vending Policy. Based on the City's experiences administering such policy, the City Council has determined that amendment and restatement of the policy is necessary to more fully carry out the intent of SB 946 and to more fully protect the public health, safety, and welfare.

(vi) All legal prerequisites to the adoption of this Resolution have occurred.

B. Resolution.

NOW THEREFORE, the City Council hereby finds and resolves as follows:

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July 20, 2021

Section 1. The City Council finds the facts set forth in the Recitals, Part A of this Resolution, are true and correct.

Section 2. The City Council hereby approves and adopts the “Sidewalk Vending Policy” attached hereto as Exhibit A, and incorporated by reference herein.

Section 3. If any section, subsection, sentence, clause, or phrase of this Resolution or the attached Sidewalk Vending Policy is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution or Sidewalk Vending Policy. The City Council hereby declares that it would have adopted this Resolution and the attached Sidewalk Vending Policy, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Resolution or the attached Sidewalk Vending Policy would be subsequently declared invalid or unconstitutional.

Section 4. Penalties for Violation of Policy for Sidewalk Vendors. Any violation of the Sidewalk Vending Policy set forth in the attached Exhibit A constitutes a violation of the Sidewalk Vending Ordinance and is punishable by administrative citation as provided therein.

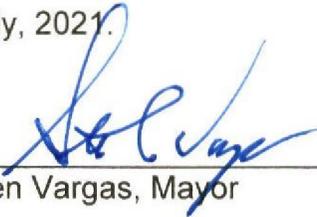
Section 5. This Resolution shall be effective on August 19, 2021. On such date, the Sidewalk Vending Policy adopted by Resolution No. 2019-055 shall be of no further force or effect.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

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APPROVED AND ADOPTED this 20th day of July, 2021.




Steven Vargas, Mayor

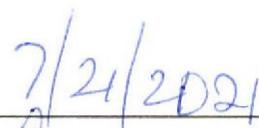
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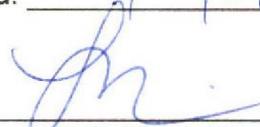

Lillian Harris-Neal, City Clerk

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council of the City of Brea, held on the 20th day of July, 2021, by the following vote:

AYES:	COUNCIL MEMBERS: Vargas, Hupp, Marick, Parker, Simonoff
NOES:	COUNCIL MEMBERS: None.
ABSENT:	COUNCIL MEMBERS: None.
ABSTAIN:	COUNCIL MEMBERS: None.

Dated: _____




Lillian Harris-Neal, City Clerk

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EXHIBIT A

SIDEWALK VENDING POLICY

[Current as of July 20, 2021]

Section 1. Applicability. This Sidewalk Vending Policy applies to sidewalk vending conducted on City sidewalks. This Policy does not apply to sidewalk vending conducted on private property. Any such operations require compliance with the Zoning Code including obtaining any permits or other authorizations required to conduct commercial sales activities in a particular zone. It is unlawful for sidewalk vending to be conducted on private property without written approval of the property owner or lessee, and possession of all applicable Zoning Code permits or other authorizations.

Section 2. Definitions. The definitions set forth in Brea City Code Section 1.00.050 and Chapter 5.244 shall apply to this Policy. Additionally, whenever used in this Policy, the following words and phrases shall have the meanings set forth below:

“Certified farmers’ market” means a location operated in accordance with Chapter 10.5 of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter.

“Director” means the Director of Administrative Services of the City of Brea or such person’s designee.

“Policy” means this Sidewalk Vending Policy.

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

“Shade device” means an umbrella or other device used to provide shade at a sidewalk vending stand. “Shade device” does not include food or merchandise being sold at a sidewalk vending stand.

“Sidewalk” means that portion of a public highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel. “Sidewalk” also means any publicly owned pathway designed and designated for pedestrian travel.

“Sidewalk Vending Cart” means any mobile, wheeled facility, contrivance, cart, pushcart, or other wheeled apparatus used by a roaming sidewalk vendor to vend from place to place.

“Sidewalk Vending Ordinance” means Brea City Code Chapter 5.244.

“Sidewalk vending permit” or “permit” means a sidewalk vending permit issued to an individual for his or her use, or to an individual, company, partnership, corporation, or other entity as principal for two or more sidewalk vendors.

“Sidewalk Vending Stand” means any facility, contrivance, stand, or apparatus used by a stationary sidewalk vendor to vend from a fixed location.

“Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location on a sidewalk.

“Swap meet” means a location operated in accordance with Business and Professions Code Section 21660 et seq. and any regulations adopted pursuant thereto.

“Temporary special permit” means a permit issued by the City for the temporary use of, or encroachment on, the sidewalk or any other public area. “Temporary special permit” includes an encroachment permit, special event permit, or temporary event or use permit for purposes such as filming, parades, or outdoor concerts.

Section 3. Permit Application.

- A. To apply for a sidewalk vending permit, a person must file an application with the Director, accompanied by a nonrefundable processing fee in an amount established by City Council resolution. A sidewalk vending permit is not required for any stand, display, cart or other non-motorized conveyance used for vending, for which an encroachment permit or similar license has been issued by the City. The application shall be in a form prescribed by the Director and shall contain, at a minimum, the following:
1. The legal name and current address and telephone number of the applicant;
 2. If the applicant is an agent of an individual, company, partnership, corporation, or other entity, the name and business address of the principal, and how many individual vendors will operate under the principal’s permit;
 3. A description of the food or merchandise offered for sale;
 4. Whether the applicant intends to operate as a stationary sidewalk vendor or as a roaming sidewalk vendor. Applications for a sidewalk vending stand must identify the proposed location of the intended operation.
 5. A copy of a valid business license issued pursuant to Section 5.24.100.B of the Brea City Code;
 6. A California seller’s permit pursuant to Section 6067 of the Revenue and Taxation Code, if required by law;
 7. Certification by the applicant that the information contained in the application is true to his or her knowledge and belief;
 8. If a vendor of food or food products, proof of completion of a food handler course and proof of all required approvals from the County of Orange, Department of Public Health;

9. The applicant's agreement to indemnify, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless with respect to any and all claims and liabilities arising out of issuance of the sidewalk vending permit and/or injuries or damages of any kind caused by or resulting from acts or activities of any vendor operating pursuant to such permit;
 10. If the application is for three or more sidewalk vendors to operate under a principal's permit, the applicant must provide satisfactory evidence of having procured commercial general liability insurance for the term of the permit, with limits not less than \$1,000,000 per occurrence, and in such form as required by the Director, covering the activities of such individuals while engaged in vending activities pursuant to such permit; and
 11. Any other information reasonably required regarding the time, place, and manner of the proposed sidewalk vending.
- B. It is applicant's responsibility to seek clarification about landscaped areas at a proposed location for a sidewalk vending stand. Areas may be deemed to be "landscaped" regardless of whether or not there are existing trees, plants, or other similar foliage on site.

Section 4. Criteria for Approval or Denial of Permit.

- A. Applications for a sidewalk vending stand shall be subject to preliminary review by the Administrative Services Department and may be forwarded to other City departments for their review prior to final review and approval.
- B. The Director shall issue a sidewalk vending permit unless there are grounds for denial. A sidewalk vending permit shall be denied if the Director determines one or more of the following:
1. The application is for a sidewalk vending stand and has not received approval by a City department due to noncompliance with this Policy.
 2. Information contained in the application, or supplemental information requested from the applicant, is false in any material detail.
 3. The applicant has failed to provide a complete application, after having been notified of the requirement to produce additional information or documents.
 4. The applicant has failed to pay any previous administrative fines, complete any community service, and/or complete any other alternative disposition associated with a previous violation of the Sidewalk Vending Ordinance or this Policy.
- C. If the permit is denied, written notice of such denial and the reasons therefor shall be provided to the applicant.

Section 5. Permit Expiration and Renewal. A sidewalk vending permit shall be valid from the date of issue until December 31st of each calendar year. A person may apply for

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a permit renewal on a form provided by the City prior to the expiration of his or her active sidewalk vending permit. Renewal applications shall be processed in the same manner as an initial application and shall be subject to a nonrefundable processing fee.

Section 6. Permit Revocation. The Director may revoke a sidewalk vending permit for a fourth violation or subsequent violation of the Sidewalk Vending Ordinance or this Policy within one year of the first violation. A sidewalk vendor whose permit is revoked may apply for a new sidewalk vending permit on the first City business day of the following calendar year. Any and all acts of a sidewalk vendor, including violations of this Policy, shall be deemed to be the acts of the holder of the permit under which the sidewalk vendor is vending.

Section 7. Appeals. Any person aggrieved by the decision of the Director to issue, deny issuance, or revoke a sidewalk vending permit may appeal the decision to the City Manager. The appeal shall be filed with the City Clerk within 15 days following the date of the Director's decision. The City Manager, or a designee, shall issue a written decision on the appeal and such decision shall be final.

Section 8. Permits Nontransferable. No permit granted pursuant to this Policy shall be transferable.

Section 9. Operating Requirements. Sidewalk vendors shall comply with the following:

A. Sidewalk vending shall not be conducted in the following locations:

1. Within 100 feet of any street intersection or as required by paragraph (C) below, whichever distance is greater.
2. Within 50 feet of any alley measured from the intersection of the outer edge of the alley with the sidewalk.
3. Within 10 feet of any fire hydrant, fire call box, or other emergency facility.
4. Within 10 feet of any public or private driveway or driveway apron measured from the intersection of the outer edge of the driveway with the sidewalk.
5. Within 25 feet of trash or recycling receptacles, bike racks, benches, bus stops or similar public use facility.
6. Within 25 feet of any public art object.
7. Within 50 feet of any sidewalk vending stand.
8. Within 50 feet of any business signage.
9. Within 200 feet of any government building, public safety facility including police stations and fire stations, or any school.

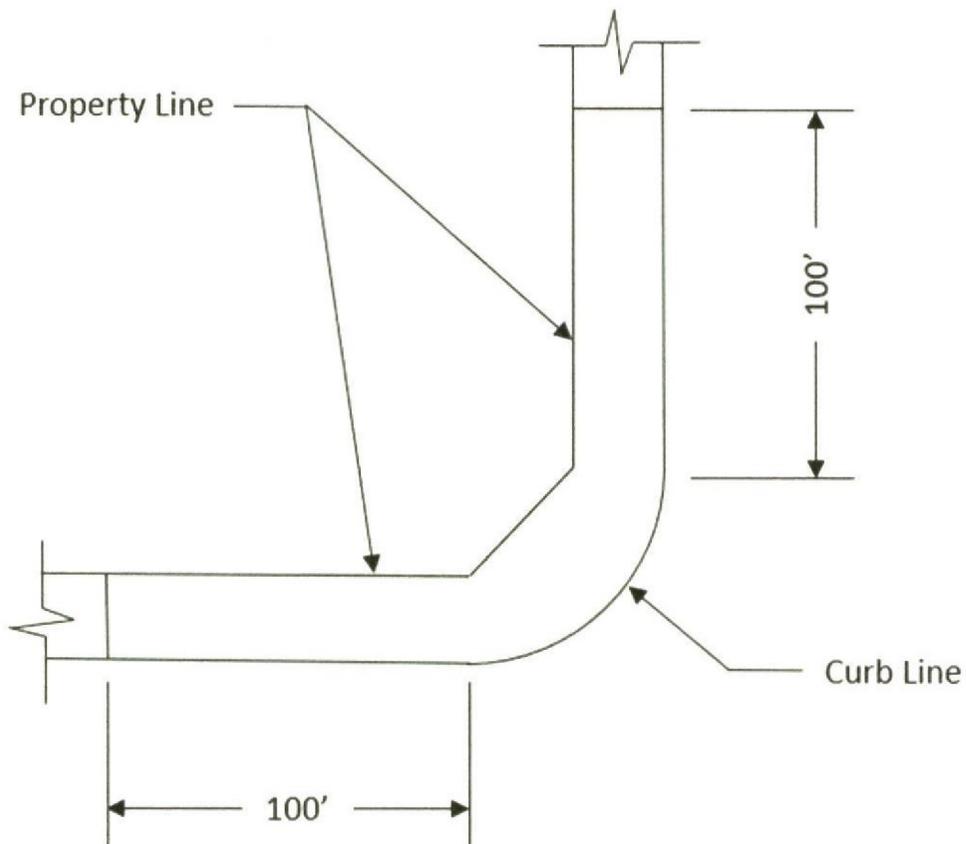
10. Within 500 feet of a permitted certified farmers' market, a swap meet, or an area designated for a temporary special permit or City-sponsored event. This prohibition shall be limited to the operating hours of the farmers' market or swap meet, or the limited duration of the temporary special permit or event.
 11. Upon or within any roadway, median strip, or dividing section.
 12. In any City parking lot or City parking structure.
 13. Within or upon any landscaped area.
 14. On any private property without the express written consent of the owner or lessee of the property, and all applicable zoning approvals or permits.
- B. Sidewalk vending shall not be conducted in a manner that blocks or obstructs the free movement of pedestrians or vehicles. In accordance with California Building Code Chapter 11B, Section 403.5.1, or any successor provision thereto, the "clear width" for sidewalks and walks shall be 48 inches minimum. When, because of right-of-way restrictions, natural barriers or other existing conditions, the City determines that compliance with the 48-inch clear sidewalk width would create an unreasonable hardship, the clear width may be reduced to 36 inches. Sidewalk vendors must at all times provide a clearance of not less than forty-eight inches (or such greater clearance as may be required by applicable state or federal accessibility standards) on all sidewalks so as to enable persons to freely pass while walking, running, or using mobility assistance devices.
- C. Sidewalk vending shall not be conducted in a manner that results in visual obstructions at an intersection of streets within the restricted area depicted in Attachment 1.
- D. Sidewalk vending is permitted between the hours of 8:00 a.m. and 10:00 p.m., daily, except as follows:
1. In areas zoned exclusively as 'residential', sidewalk vending is permitted between the hours of 8:00 a.m. and sunset.
 2. In nonresidential areas, sidewalk vending is permitted consistent with the hours of operation of other businesses or uses on the same street.
 3. In any City park, sidewalk vending is permitted only during the open hours of the park.
- E. Stationary sidewalk vendors shall not vend in areas that are zoned residential.
- F. Stationary sidewalk vendors shall not vend within any park where the City has awarded an exclusive concession agreement for the sale of food or merchandise.

- G. A sidewalk vendor shall conspicuously display his or her sidewalk vending permit, or a full, true and correct copy of the principal's permit, if applicable, at all times while engaged in sidewalk vending. Such permit shall be displayed on the sidewalk vending cart or sidewalk vending stand utilized by the sidewalk vendor. It is a violation of this Policy for any sidewalk vendor to display: (i) a sidewalk vending permit not issued to that sidewalk vendor; or (ii) a principal's sidewalk vending permit unless the sidewalk vendor has been authorized in writing to vend under authority of that principal's permit.
- H. Sidewalk vendors of food or food products shall possess and display in plain view on the sidewalk vending cart or sidewalk vending stand a valid permit from the County of Orange, Department of Public Health, or equivalent City permit. No sidewalk vendor shall utilize or maintain any open flame in connection with sidewalk vending.
- I. Sidewalk vendors shall provide a trash receptacle for customers and ensure proper disposal of customer trash. Prior to leaving any vending location, the sidewalk vendor shall pick up, remove, and dispose of all trash generated by, or reasonably attributable to, the vending operations, within a 15 foot radius of the vending location.
- J. Sidewalk vendors shall comply with all applicable laws including: state food preparation, handling, and labeling requirements; fire codes and regulations; noise standards; and the Americans with Disabilities Act of 1990 and other disability access standards (both state and federal).
- K. Except as provided in paragraph (L) below, a sidewalk vending stand (including any and all attachments, accessories, trash receptacles, signs, displays, and/or other appurtenances) at its greatest dimensions shall occupy a space that shall not exceed the following: (i) a total height of four feet measured from the ground; (ii) a total width of four feet (i.e., measured perpendicular to the sidewalk direction); and (iii) a total length of six feet (i.e., measured parallel to the sidewalk direction).
- L. If a sidewalk vending stand is equipped with a shade device, then such shade device shall: (i) be supported by a single pole; (ii) provide a minimum of seven feet of underneath clearance to allow for pedestrian passage; (iii) have a maximum width or diameter of nine feet measured parallel to the ground; (iv) have a maximum height of nine feet; and (v) have its support pole located at all times within the 4' by 4' by 6' maximum dimensions specified in paragraph (K) above.
- M. No advertising, merchandise, or text shall be displayed on or hung from a shade device used at a sidewalk vending stand.
- N. No sidewalk vendor shall utilize any freestanding sign while vending.
- O. No sidewalk vending stand shall be motorized or utilize a generator.
- P. No sidewalk vending cart shall be permanently attached to any structure or real property, or left overnight, on public property.

- Q. Sidewalk vending carts and sidewalk vending stands shall not be left unattended for more than 10 minutes. The sidewalk vendor assumes all risk of damage to or theft from an unattended sidewalk vending cart or sidewalk vending stand, and is responsible for all claims arising from an unattended sidewalk vending cart or sidewalk vending stand.
- R. Merchandise offered for sale by a stationary sidewalk vendor shall be stored within or upon, and shall be sold from, such vendor's sidewalk vending stand. No merchandise shall be stored, displayed, or otherwise placed on the sidewalk or on any adjacent property.
- S. All sidewalk vendors operating under a principal's permit for which insurance is required, must carry proof of such insurance while vending.
- T. The maximum size sign that may be displayed by a sidewalk vendor is two square feet.

ATTACHMENT 1

INTERSECTION RESTRICTED AREA



Legend:

 Restricted Area