

ORDINANCE NO. 4179

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH ADDING CHAPTER 5.100 TO THE HUNTINGTON BEACH MUNICIPAL CODE ESTABLISHING A SIDEWALK VENDING PERMITTING AND REGULATORY PROGRAM, REPEALING ORDINANCE NO. 4177, WHICH ESTABLISHED AN INTERIM SIDEWALK VENDING PROGRAM, AND REPEALING SECTION 5.50.170(F) WHICH PROHIBITS VENDING FROM A HUMAN POWERED CONVEYANCE

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Findings.

A. On September 18, 2018, then Governor Brown signed into law Senate Bill ("SB") 946, adding Government Code Sections 51036-51039, which impose limits on how local authorities, may regulate sidewalk vending.

B. Prior to the adoption of SB 946, the City of Huntington Beach prohibited Sidewalk Vending. Following adoption of SB 946, on January 22, 2019, the City Council adopted Ordinance No. 4177, adopting temporary sidewalk vending regulations for 120 days, through May 23, 2019. Ordinance No. 4177 was adopted as an urgency ordinance pursuant to Charter Section 501 for the immediate preservation of the public peace, health, and safety.

C. The City Council finds and concludes that SB 946 seeks to impermissibly strip the authority of Charter cities under Article XI, Section 5 of the California Constitution with respect to "Municipal Affairs." The authority of a City to regulate its parks and sidewalks has long been recognized as a Municipal Affair and as such outside the reach of State law. The power of a Charter City over Municipal Affairs is all embracing, restricted and limited only by the City Charter, and free from any interference by the State through its general laws. As a Charter City, Huntington Beach has the authority to control, govern and supervise its own parks and sidewalks.

D. The City Council now adopts this Ordinance pursuant to Huntington Beach Charter Section 103, which authorizes the City Council "to make and enforce all laws and regulations in respect to Municipal Affairs, subject only to such restrictions and limitations as may be provided in this Charter or in the Constitution of the State of California." This Ordinance is adopted as a successor to Ordinance No. 4177.

E. This Ordinance adds Chapter 5.100 to the Huntington Beach Municipal Code ("HBMC") establishing a "Sidewalk Vending Permitting and Regulatory Program" to protect health, safety and welfare of the City of Huntington Beach.

SECTION 2. Chapter 5.100 is hereby added to the Huntington Beach Municipal Code to read as follows:

### **5.100.010 Purpose**

The purpose of this Chapter is to establish a Sidewalk Vendor Permitting and Regulatory Program. The provisions of this Chapter allow the City to encourage small business activities by removing total prohibitions on Sidewalk Vending and providing regulation and enforcement of unpermitted Sidewalk Vending Activities to protect the publics' health, safety and welfare.

A. The City Council hereby finds that, to promote the health, safety and welfare, restrictions on sidewalk vending are necessary in part to:

1. Ensure no interference with the performance of public safety officers including, police, firefighter, lifeguard, security and emergency medical personnel services.
2. Ensure no interference with pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles.
3. Ensure no interference with barriers (bollards, vehicles, cement or water) designed to stop vehicles and prevent injury to people.
4. Provide reasonable access for Sidewalk Vending Activities in portions of the City while preserving the use and maintenance of sidewalks, Pathways, poles, posts, traffic signs or signals, hydrants, restrooms, trash receptacles, firefighting apparatus, mailboxes, public benches and/or planters, as well as access to locations used for public transportation services.
5. Reduce exposure to the City for personal injury or property damage claims and litigation.
6. Ensure the safe sale of Food and Merchandise in the public right-of-way, by providing the public a simple way to ensure Sidewalk Vendors prepare Food safely and according to Orange County Department of Public Health requirements.
7. Prevent unsanitary conditions and ensure trash and debris in the areas vending is taking place are removed by Sidewalk Vendors.
8. Ensure that visibility, sight lines, and accessibility for vehicular and pedestrian traffic on sidewalks and other rights of way are protected while accommodating Sidewalk Vendor equipment.
9. Protect the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles.
10. Ensure reasonable access for the use and maintenance of sidewalks, Pathways, poles, posts, traffic signs or signals, hydrants, restrooms, trash receptacles, firefighting apparatus, mailboxes, public benches and/or planters, as well as access to locations used for public transportation services.

11. Mitigate the impacts of Sidewalk Vending Activity and protect the unique characteristics of the City including to maximize public access to and along the coast.

12. Prevent people from “camping,” thus creating unsanitary conditions.

B. The City Council hereby finds that the unique characteristics of the City require certain restrictions on Sidewalk Vending Activities as follows:

1. The City Council finds that the existence in the City of Sidewalk Vendors seek and do draw patrons to their Food and Merchandise. This can create serious safety problems by impacting the ability of pedestrians to move safely on sidewalks and through cross walks and impeding the response time of safety personnel, particularly in Downtown Huntington Beach, at the Beach, at City Parks and in residential areas. Sidewalk Vendors can also impact access to and egress from businesses. This Chapter imposes reasonable time, place, and manner restrictions on Sidewalk Vendors to the extent necessary to ensure the safety of Sidewalk Vendors, their patrons, the general public and to prevent unreasonable interference with residents’ enjoyment of peace and quiet in the City.

2. The Civic Center contains the City’s emergency operation center, the headquarters for the Fire Department, and other critical infrastructure. Restrictions on Sidewalk Vending Activity are necessary to ensure that fire equipment is easily accessible and critical infrastructure is maintained and accessible at all times.

3. City parks provide passive and active recreational opportunities, and restrictions on Sidewalk Vending Activity are necessary to protect the natural resources, recreational and sport opportunities, as well as scenic and natural character of these parks.

4. The City seeks to preserve the peace and quiet of the Residential Zones of the City, by prohibiting commercial activities such as Sidewalk Vendors.

5. Many of the Sidewalks and Pathways in the City are under eight (8) feet wide or less, and Sidewalk Vending Activity in these areas would unreasonably interfere with the flow of pedestrians and disrupt access for persons with disabilities.

#### **5.100.020 Definitions**

A. Whenever any words or phrases used herein are not defined, but are defined in the California Vehicle Code, such definitions shall apply, including for the definitions of Business District, Highway, Road, Sidewalk, and Street. If a term or phrase is not defined in this part, or elsewhere in this Code, the most common dictionary definition is presumed to be correct.

B. **“Beach”** means that strip of land owned and/or operated by the City of Huntington Beach, south of Warner Avenue, lying between Pacific Coast Highway and the mean

high tide line of the Pacific Ocean. "Beach" also includes the Adjacent Beach Area as defined at Section 13.08.005.

C. **"Beach Parking Lot"** means the roads, driveways or parking area to service the Beach, the Pier and Pier Plaza, excluding those areas located on a street or highway.

D. **"Beach Service Road"** means the paved roadway on the Beach that extends from Beach Boulevard to Seapoint Avenue running parallel to Pacific Coast Highway nearest to the shoreline of the Pacific Ocean.

E. **"Cart"** means a push cart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for Sidewalk Vendor Activity.

F. **"Certified Farmers' Market"** means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that Chapter, or any successor Chapter.

G. **"City Building"** means any building and the abutting parking lot(s) which is owned or occupied by the City of Huntington Beach or any of its Departments and which is used for public purposes.

H. **"City Property"** means all property owned or controlled by the City, including, but not limited to, buildings, libraries, alleys, beaches, boardwalks, parks, pathways, streets, parking lots, sidewalks, and walking trails.

I. **"Civic Center"** means the area in the City of Huntington Beach, County of Orange bounded by Lake Street on the east, Yorktown Avenue to the north, Main Street on the west, Utica Avenue on the south, and Park Street on the east and south between Utica Avenue and Lake Street.

J. **"Downtown Huntington Beach"** means Districts 1, 2, and 3 of the Huntington Beach Downtown Specific Plan, which are depicted below:

3 - LAND USES & DEVELOPMENT STANDARDS

3.3.1. District 1 - Downtown Core Mixed-Use



Figure 3-24 District 1 Map

HUNTINGTON BEACH DOWNTOWN SPECIFIC PLAN NO. 5  
DOWNTOWN SPECIFIC PLAN  
October 6, 2011

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3 - LAND USES & DEVELOPMENT STANDARDS

3.3.2. District 2 - Visitor-serving Mixed-Use

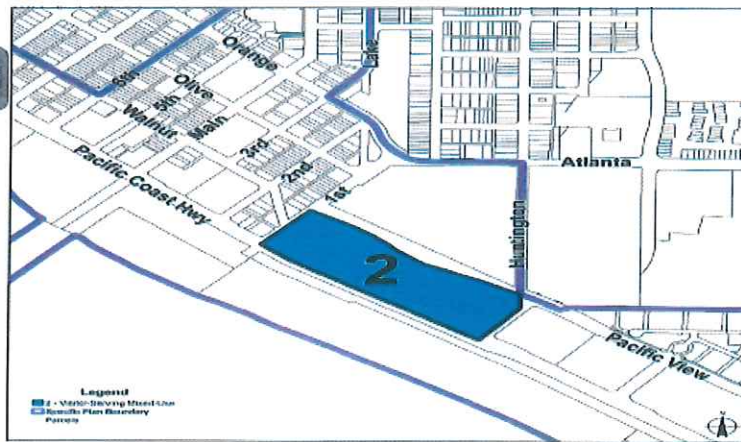


Figure 3-40 District 2 Map

HUNTINGTON BEACH DOWNTOWN SPECIFIC PLAN NO. 5  
DOWNTOWN SPECIFIC PLAN  
October 6, 2011

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3 - LAND USES & DEVELOPMENT STANDARDS

3.3.3. District 3 – Visitor-serving Recreation

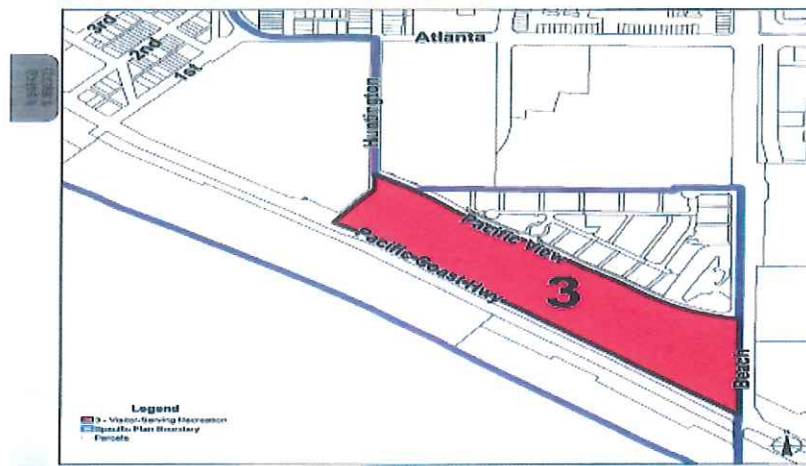


Figure 3-43 District 3 Map

HUNTINGTON BEACH DOWNTOWN SPECIFIC PLAN NO. 5  
DOWNTOWN SPECIFIC PLAN  
October 6, 2011

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K. **"Fire station"** means any facility where fire engines and other equipment of the City Fire Department are housed.

L. **"Food"** means any item provided in Health and Safety Code Section 113781, or any successor section.

M. **"Lifeguard Facilities"** means any and all lifeguard facilities located at the Beach.

N. **"Marijuana"** means both medical marijuana and non-medical marijuana.

O. **"Merchandise"** means any tangible personal property that can be sold and immediately obtained from a Sidewalk Vendor, excluding Food. Items for rent shall not be considered Merchandise. Merchandise excludes any Service.

P. **"Off-Street City Pay Parking Lots"** means any leased parking lot, structure, facility or area located outside of the public right-of-way that the City owns or operates pursuant to Chapter 10.50 for paid parking of vehicles, regardless of the method of payment, including but not limited to parking attendants, meters, or otherwise.

Q. **"Park"** means each and every park recreation center, lake, pond or other body of water, riding and hiking trail, parking lot and every other recreation facility owned, managed and/or controlled by the City and under the jurisdiction of the Director of Community Services. There are two types of Parks:

a. **"Active Parks"** contain one (1) or more sporting fields or actively encourage physical activity.

b. **"Passive Parks"** are typically less developed than an active park, but may contain features such as walking tracks, gardens, seating, barbecues, and picnic areas. They do not usually contain sports infrastructure or encourage strenuous physical activity, although they may contain playground equipment.

R. **"Parkway(s)"** means that portion of a public street which is not improved for actual street, curb, gutter, or sidewalk use, and which is available for planting, landscaping, and maintaining street trees.

S. **"Pathway"** means a paved path or walkway owned by the City or other public entity that is specifically designed for pedestrian travel, other than a sidewalk.

T. **"Person"** means and includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts Trust, business or common law trusts, societies, and individuals transacting and carrying on any business in the City.

U. **"Pier"** means the appurtenance beginning at the intersection of Pacific Coast Highway and Main Street on the Beach, which is a platform extending into the Pacific Ocean and supported by piles or pillars.

V. **"Pier Plaza"** means the developed area immediately north and south to the Pier, and bounded by Pacific Coast Highway and the Beach Parking Lots.

W. **"Police Station"** means any facility where police vehicles and other equipment of the City Police Department are housed.

X. **"Residential Zone"** means any area zoned or used exclusively as residential in Huntington Beach.

Y. **"Roaming Sidewalk Vendor"** means a Sidewalk Vendor who moves from place-to-place and stops only to complete a transaction.

Z. **"Service"** is any form of labor that does not require the transfer of tangible personal property.

AA. **"Sidewalk"** means that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation specifically designed for pedestrian travel and that is owned by the City or other public entity, excluding any Parkway.

BB. **"Sidewalk Vendor" or "Vendor"** means a person(s) who sells Food or Merchandise from a Cart or from one's person, upon a Sidewalk, Pathway or Park.

CC. **"Sidewalk Vendor Activities"** or **"Sidewalk Vending Activity"** means actions that qualify a person as a Sidewalk Vendor or actions done in anticipation of becoming a Sidewalk Vendor such as, but not limited to, placement, or maintenance of any Cart.

DD. **"Special Event"** means any event permitted pursuant to Section 13.10.050 of the Municipal Code.

EE. **"Specific Event"** means any event permitted pursuant to Chapter 13.54 of the Municipal Code.

FF. **"Swap Meet"** means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that Chapter, or any successor Chapter.

#### **5.100.030 Sidewalk Vendor Permit Required**

A. No Person, either for themselves or any other Person, shall engage in any Sidewalk Vendor Activities within the City without first applying for and receiving a Sidewalk Vendor Permit from the Chief Financial Officer.

B. A written application for a Sidewalk Vendor Permit shall be filed with the Chief Financial Officer on a form provided by the City. Such application shall be accompanied by a nonrefundable application fee in such amount as established by Resolution of the City Council. Any such permit shall be required to be renewed annually in conjunction with the Business License and a separate nonrefundable application fee paid yearly for such renewal application. Sidewalk Vendor Permit(s) are non-transferable and any change in ownership or operation of Cart requires a new permit.

C. The written application shall provide an address where the applicant consents to receive service of process. An acceptable address for this purpose shall include a post office box or private mailbox that complies with paragraph (2) of subdivision (b) of Business & Professions Code Section 17538.5.

#### **5.100.040 Issuance of Permit**

A. The Chief Financial Officer may issue the Sidewalk Vendor Permit if he or she finds based on all of the relevant information that:

1. The conduct of the Sidewalk Vendor will not unduly interfere with traffic or pedestrian movement, or interfere with or endanger the public health, safety or general welfare or encourage loitering.

2. The conduct of the Sidewalk Vendor will not unduly interfere with normal governmental or City operations, threaten to result in damage or detriment to public property, or result in the City incurring costs or expenditures in either money or personnel not reimbursed in advance by the Sidewalk Vendor.

3. The conduct of such Sidewalk Vending Activity will not constitute a fire hazard.

4. The Sidewalk Vendor has paid all previous administrative fines, completed all community service, and completed any other alternative disposition associated in any way with a previous violation of this Chapter.

5. The Sidewalk Vendor has not had a permit revoked within the past twelve (12) months.

6. The Sidewalk Vendor application contains all required information and the Sidewalk Vendor has not made a materially false, misleading or fraudulent statement of fact to the City in the application process.

7. The Sidewalk Vendor has paid the Business License Tax.

8. The Sidewalk Vendor's Cart and proposed Activities conform to the requirements of this Chapter.

9. The Sidewalk Vendor has provided adequate insurance to protect the City from liability associated with Sidewalk Vendor Activities, as determined by the City Risk Manager, and the City has been named as an additional insured on the Vendor's insurance policy.

10. The Sidewalk Vendor has not been convicted of any felony, or conspiracy to commit, or attempt to commit, the same, as defined by Federal or State law.

11. The Sidewalk Vendor has not been convicted of any misdemeanor, or conspiracy to commit, or attempt to commit, the same, which is sexual in nature or moral turpitude, as defined by State and/or local law.

12. The Sidewalk Vendor has not had an individual or business permit or license with any agency, board, city, county, territory, or state denied, revoked, restricted, or suspended within the last five years.

13. The Sidewalk Vendor has not been subject to an injunction for nuisance, as defined by State or local laws, within the last five years.

#### **5.100.050 Denial of Sidewalk Vendor Permit**

A. If the Chief Financial Officer finds that the requirements set forth in Section 5.100.040 as applicable have not been met, he or she shall deny the application for the Sidewalk Vendor Permit. The Chief Financial Officer, shall provide written notice of such denial specifying the ground or grounds of such denial. Notice of denial of the application for the Permit shall be deemed to have been served upon the date it is personally served on the Sidewalk

Vendor or when deposited in the United States mail with postage prepaid and addressed to the Sidewalk Vendor at his or her residence address as set forth in the application for the Permit.

B. Any Sidewalk Vendor whose application for a Sidewalk Vendor Permit has been denied by the Chief Financial Officer may appeal such denial to the City Manager by filing a written notice of appeal with the Chief Financial Officer within 10 days following the date of service of the decision and payment of the appeal fee prescribed by resolution of the City Council. The date of filing of said notice of appeal shall be the date the Chief Financial Officer receives the notice and appeal fee.

C. No Person whose permit is finally denied shall be eligible to apply for a new Sidewalk Vendor Permit for a period of one year following such final denial.

#### **5.100.060 Revocation of Permit**

Any Sidewalk Vendor Permit may be revoked by the Chief Financial Officer for good cause shown including but not necessarily limited to any of the following reasons:

A. Falsification of any information supplied by the Sidewalk Vendor upon which issuance of the Permit was based.

B. Failure of the permittee, or any employees or subcontractors of the permittee, to comply with the regulations set forth in this Chapter.

C. Conviction of a violation, or plea of guilty or nolo contendere, by the Sidewalk Vendor or any employee, subcontractor or independent contractor of the permittee, of any Federal or State law, or municipal ordinance while in the course of conducting Sidewalk Vending Activity from a Cart pursuant to the Permit.

D. Conviction of a violation, or a plea of guilty or nolo contendere, by the Sidewalk Vendor of any applicable provision or requirement of this section.

E. No Sidewalk Vendor whose permit is revoked shall be eligible to apply for a new permit for a period of one year following such revocation.

#### **5.100.070 Appeal Process for Revocation of a Permit**

Upon receipt of a timely appeal, the City Manager or his or her designated representative, shall hear such appeal within 20 days following the date of such appeal and shall give the Sidewalk Vendor not less than five days advance notice of the date of such hearing. The decision of the City Manager shall be based upon the criteria applicable to the issuance or revocation of such permit. The Sidewalk Vendor shall be notified of the decision of the City Manager by mailed, written notice. The decision of the City Manager shall be final. No revocation of a permit pursuant to this section shall be deemed effective during the pendency of a timely filed appeal until the date of mailing of the City Manager's decision; provided, however, no permit holder

shall operate during any period of time in which the insurance coverage required by this chapter is not in full force and effect.

### **5.100.080 Operating Conditions**

Every Sidewalk Vendor is subject to the following operating conditions when conducting Sidewalk Vending Activities:

- A. All Food and Merchandise shall be stored either inside or affixed to the Cart or carried by the Sidewalk Vendor. Food and Merchandise shall not be stored, placed, or kept on any public property. If affixed to the Cart, the overall space taken up by the Cart shall not exceed the size requirements provided in this Section.
- B. Sidewalk Vendors may only sell Food and/or Merchandise. Sidewalk Vendors shall not sell or provide Services.
- C. The Business License and Vendor Permit shall be displayed conspicuously at all times on the Cart or the Sidewalk Vendor. If multiple Sidewalk Vendors are staffing a Cart each Person shall obtain and wear his or her Vendor Permit on their Person in a conspicuous manner.
- D. Sidewalk Vendors shall not leave their Cart unattended.
- E. All signage and advertising related in any way to the Sidewalk Vendor shall comply with the City's sign laws. Sidewalk Vendors shall not use any electrical, flashing, wind powered, or animated sign.
- F. All Sidewalk Vendors shall allow a police officer, firefighter, lifeguard, code enforcement officer, health inspector, or other government official charged with enforcing laws related to Sidewalk Vendor Activities, at any time, to inspect their Carts for compliance with this Chapter.
- G. Carts and any attachments thereto shall not exceed a total height of four (4) feet, a total width of four (4) feet, and a total length of four (4) feet.
- H. No Cart shall contain or use propane, natural gas, batteries, or other explosive or hazardous materials.
- I. Sidewalk Vendors selling Food shall have in their possession at all times they are conducting Sidewalk Vending Activities, all applicable State Food vending licenses.
- J. Sidewalk Vendors that sell Food shall maintain a trash container in or on their Cart and shall not empty their trash into public trashcans. The size of the Sidewalk Vendor's trash container counts as part of the size limit of a Cart.
- K. Sidewalk Vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation. Sidewalk Vendors shall immediately

clean up any Food, grease or other fluid or item related to Sidewalk Vending Activities that falls on public property.

L. Sidewalk Vendors shall maintain a minimum four (4) foot clear accessible path for pedestrian ingress and egress free from obstructions, including Cart and customer queuing area.

M. Sidewalk Vendors shall ensure that all required insurance is in effect prior to conducting any Sidewalk Vendor Activities and maintained for the duration of the Permit

#### **5.100.090 Prohibited Activities and Locations**

A. Sidewalk Vendors shall comply with all Federal, State and City laws and regulations.

B. Cart(s) shall not touch, lean against or be affixed at any time to any building or structure including, but not limited to lampposts, parking meters, mailboxes, traffic signals, fire hydrants, benches, bus shelters, newsstands, trashcans or traffic barriers.

C. Sidewalk Vendors shall not engage in any of the following activities:

1. Renting Merchandise to customers.
2. Displaying Merchandise or Food not available for immediate sale.
3. Selling of alcohol, Marijuana, adult oriented material, tobacco products, products that contain nicotine or any product used to smoke/vape nicotine or Marijuana.
4. Selling Food or Merchandise to any person fifteen years of age or younger without one or both of their parents or legal guardians present.
5. Using an open flame on or within any Cart.
6. Using an electrical outlet or power source that is owned by the City or another person other than the Sidewalk Vendor.
7. Conducting Sidewalk Vending Activities anywhere in the City between the hours of 8:00 p.m. and 7:00 a.m. daily.
8. Providing or selling any Service to any Person.
9. Continuing to offer Food or Merchandise for sale, following, or accompanying any person who has been offered Food or Merchandise after the person has declined the offer to purchase Food or Merchandise.

10. Knowingly making false statements or misrepresentations during the course of offering Food or Merchandise for sale.

11. Blocking or impeding the path of the person(s) being offered Food or Merchandise to purchase.

12. Making any statements, gesture, or other communication which a reasonable person in the situation of the person(s) being offered Food or Merchandise to purchase would perceive to be a threat and which has a reasonable likelihood to produce in the person(s) a fear that the threat will be carried out.

13. Touching the person(s) being offered Food or Merchandise without that person(s)' consent.

14. Advertising any product or service that is not related to the Food or Merchandise being offered for immediate sale.

15. Placing their Cart outside of any Pathway or sidewalk when engaging in Sidewalk Vending Activities.

D. Sidewalk Vendors shall not engage in Sidewalk Vending Activities at the following locations:

1. Any Residential Zone in the City.

2. The Beach, Beach Parking Lot, Beach Service Road, Lifeguard Facilities, Pier, and Pier Plaza. The City Council finds that the City has permitted restaurant and Merchandise concessions on the Beach. The area adjacent to the Pier and Pier Plaza is highly commercial and crowded with pedestrians. Permitting any additional Sidewalk Vending Activity would result in an undue concentration of commercial activity at this portion of the Beach that would unreasonably interfere with existing business, public use of the Beach, and access to the Coast.

The remainder of the Beach, north-westerly from Pier Plaza to a point which is 6,100 feet north-westerly of Goldenwest Street, and which includes "Dog Beach," has virtually no commercial activity, except Specific Events and Special Events. Routine commercial activity, including Sidewalk Vendors is prohibited in order to preserve the unusual beauty and view provided on this portion of the Beach.

3. All Parks in the City, including both Active and Passive parks. The City Council finds that in some cases, it has permitted restaurant concessions, such as at Huntington Beach Central Park – West Side and East Side. Permitting any additional Sidewalk Vending Activity would result in an undue concentration of commercial activity at Central Park that unreasonably interferes with existing business and the use of the Park. City Parks have unique beauty, and provide a reserve for migratory birds and

monarch butterflies. In order to preserve the unusual beauty and view provided in these Parks, Sidewalk Vending Activity is prohibited.

Further, neighborhood, Passive and Active Parks allow for child, youth and adult sports, family gathering, picnics and walks. These Parks are a refuge from the commercial activities of ordinary life, and accordingly, Sidewalk Vending Activity is prohibited.

4. Pacific Coast Highway with the City boundaries.
5. Downtown Huntington Beach. The City Council finds that the City has permitted restaurant concessions and stationary sidewalk kiosks in Downtown Huntington Beach. Downtown Huntington Beach is a heavily pedestrian-crowded area. Permitting any additional Sidewalk Vending Activity would result in an undue concentration of commercial activity at Downtown Huntington Beach that unreasonably interferes with existing business, pedestrian ingress and egress, the use of the Beach, and access to the Coast. Accordingly, Sidewalk Vending Activity is prohibited in Downtown Huntington Beach.
6. The Civic Center, City Building, Fire Station, Police Station, Off-Street City Pay Parking Lot, or public property.
7. Any City Property that does not meet the definition of a sidewalk or Pathway including, but not limited to, any alley, beach, pier, square, street, street end, or parking lot.
8. A permitted Certified Farmers' Market or Swap Meet during the limited operating hours of that Certified Farmers' Market or Swap Meet.
9. An area designated for a Specific Event pursuant to a City issued permit, during the limited duration of the Specific Event.
10. An area designated for a Special Event pursuant to a City issued permit, during the limited duration of the Special Event.
11. An area designated for barriers for protection of the public.
12. A public or private school, a place of worship, or a large or general child day-care facility, or within two-hundred (200) feet of any of the aforementioned property.
13. Within one-hundred (100) feet of:
  - a. Another Sidewalk Vendor.
  - b. The intersection of a street and a Sidewalk.
  - c. Any marina.
  - d. The portion of any City facility that is renting Merchandise or selling Food to the public or where the rental Merchandise is stored.

e. Any police officer, firefighter, lifeguard or emergency medical personnel who are actively performing their duties or providing services to the public.

14. Within twenty-five (25) feet of a:

- a. Fire hydrant.
- b. Curb which has been designated as white, yellow, green, blue, or red zone, or a bus zone.
- c. Automated teller machine.
- d. Driveway, alley, or entrance to a parking lot or parking garage.
- e. Entrance or exit to a building, structure or facility.
- f. Trash receptacle, bike rack, bench, bus stop, restroom, or similar public use items.

#### **5.100.100 Penalties**

A. Violations of this Chapter shall not be prosecuted as infractions or misdemeanors and shall only be subject to Administrative Citation pursuant to Chapter 1.18, except that notwithstanding Section 1.18.070, any violation of this Chapter shall be assessed administrative fines in the following amounts:

- 1. An administrative fine not exceeding one hundred dollars (\$100) for a first violation.
- 2. An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year of the first violation.
- 3. An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year of the first violation.

B. If a Sidewalk Vendor violates any portion of this Chapter and cannot present the citing officer with proof of a valid permit, the Sidewalk Vendor shall be assessed administrative fines in the following amounts:

- 1. An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.
- 2. An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year of the first violation.
- 3. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one (1) year of the first violation.

C. Upon proof of a valid permit issued by the City, the administrative fines set forth in Subsection 5.100.100(B) shall be reduced to the administrative fines set forth in Subsection 5.100.100(A), or any successor sections.

D. The Chief Financial Officer, or the Chief Financial Officer's designee, may revoke a permit issued to a Sidewalk Vendor for the term of that permit upon the fourth violation or subsequent violations within one (1) year of the first violation.

### **5.100.110 Citation Appeals**

A. Administrative citations may be appealed pursuant to Section 1.18.120, except where the hearing officer is considering an administrative fine, he or she has the power to:

1. Reduce the fine based upon the person's ability to pay the fine.
2. If the Hearing Officer finds the person meets the criteria described in subdivision (a) or (b) of Government Code Section 68632, or any successor section, the Hearing Officer, shall order the City to accept, in full satisfaction, twenty (20) percent of the administrative fine imposed pursuant to this Chapter.
3. 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.

B. All appeals of administrative citations shall be conducted in accordance with Chapter 1.18 of this Code."

SECTION 3. Municipal Code Section 5.50.170(F) prohibits vending from a human powered conveyance. Municipal Code Section 5.50.170(F) is repealed.

SECTION 4. Ordinance No. 4177 is repealed as of the effective date of this Ordinance.

SECTION 5. The recitals provided in this Ordinance are true and correct and are incorporated into the substantive portion of this Ordinance.

SECTION 6. The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 7. If any section, subsection, sentence, clause, phrase, part, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section,

subsection, sentence, clause, phrase, part, or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts, or portions be declared invalid or unconstitutional.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_ day of April 2019.

ATTEST:

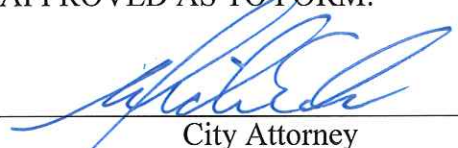
\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney SFF  
MW

INITIATED AND APPROVED:

  
\_\_\_\_\_  
Chief Financial Officer