



Item Number: {{item.number}}

City Council / Board of Directors

Public Hearing(s)

Meeting of: February 20, 2024

Submitted By:

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Subject:

Proposed Ordinance No. 2449, Amending Title 16 of the Victorville Municipal Code with updated Regulations and Requirements for Sidewalk Vendors, Solicitors, and Other Mobile Vendors and Businesses; Proposed Resolution No. 24-010, Adopting Related New Business License Fees, and Proposed Resolution No. 24-012, Adopting a Related Business License Fee Reduction Policy

Recommendation:

That the Honorable City Council:

- (1) Conduct the Public Hearing and receive testimony regarding proposed Ordinance No. 2449 and Resolution Nos. 24-010 and 24-012;
- (2) Close the Public Hearing;
- (3) Find Ordinance No. 2449 categorically exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines Section 15061(b)(3) ("Common Sense" exemption);
- (4) Introduce Ordinance No. 2449 for adoption and first reading by title only;
- (5) Waive further reading in full of proposed Ordinance No. 2449;
- (6) Find Resolution Nos. 24-010 and 24-012 statutorily exempt under CEQA Guidelines Section 15273 (Rates, Tolls, Fares, and Charges);
- (7) Adopt Resolution No. 24-010 to approve a minor user fee study and adopt an amendment to the City's Master User Fee Schedule to establish new business license fees applicable to sidewalk vendors and mobile vehicle vendors with certain other conforming changes; and
- (8) Adopt Resolution No. 24-012 to establish a business license fee reduction policy for first-time applicants for sidewalk vendor and mobile vehicle vendor licenses.

Fiscal Impact:

The adoption of proposed Ordinance 2449 will not directly create budgetary impacts. However, the application of the Ordinance may increase staff costs associated with monitoring and instituting compliance actions for licensed and unlicensed sidewalk and mobile street vendors.

The adoption of proposed Resolution No 24-010 may increase revenues related to sidewalk vendors and mobile vendors stemming from new business licensing user fee categories where such fees are based on 100% cost recovery.

The adoption of proposed Resolution No 24-012 will provide for a discount on the business license fees established by Resolution No. 24-010 (for first-time applicants to incentivize licensure) subsequently decreasing the anticipated revenues related to sidewalk and mobile vendor business licenses; however, the decrease may be partially offset by increased vendor compliance and reduced compliance monitoring costs.

Strategic Plan Goal:

In general, the proposed Ordinance and Resolutions seek to improve Public Safety (Goal B) by establishing operational and licensing requirements for sidewalk and mobile vehicle vendors operating within the City's pedestrian sidewalks, and increase Community and Economic Development (Goal C) with community and business partners by providing education and assistance to sidewalk and mobile street vendors seeking city licensure, as well as to help these businesses maintain compliance to related local regulations.

Background:

Ordinance 2449

Proposed Ordinance 2449 provides a new City regulatory framework primarily applicable to sidewalk vendors in response to the following recent State legislation: The California Safe Sidewalk Vending Act, Senate Bill 946 ("**SB 946**") passed in 2018; and Senate Bill 972 ("**SB 972**"), which modified the California Retail Food Code ("**CRFC**"), passed in 2022. The Ordinance also provides updated City regulations for mobile vehicle vendors (street vendors/food truck operators) in accordance with existing laws.

SB 946

SB 946 was intended to promote entrepreneurship and support immigrant and low-income communities through the decriminalization and legalization of sidewalk vending in California (codified in Government Code Sections 51036-51039). Effective January 1, 2019, SB 946 prohibits local agencies (such as the City) from banning sidewalk vending and only permits regulation of sidewalk vendors in accordance with the new law. In other words, if a local agency's laws did not regulate sidewalk vendors in a manner consistent with SB 946, the local agency could not enforce those laws once the bill became effective. As a result, most local agencies have fashioned and adopted new ordinances compliant with SB 946 to provide for localized regulatory control within the confines of the new law.

SB 946 defines a “sidewalk vendor” as a “person who sells food or merchandise from a pushcart, stand, display, pedal driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path,” and further specifies that a sidewalk vendor may be “stationary” (operating from a fixed location) or “roaming” (moving from place to place and stopping only to complete a transaction).

The bill also prohibits cities from imposing regulations that are based upon “perceived community animus” or “economic competition” and does not permit cities to require that sidewalk vendors only operate within specific parts of the public right-of-way—except when that restriction is directly related to objective health, safety, or welfare concerns. SB 946 allows cities to adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns and requires sidewalk vendors to comply with all State or county permits or licensing requirements needed to gain local licensure.

In addition, SB 946 prohibits assessment of criminal penalties for violations of sidewalk vending ordinances/regulations, and instead imposes progressive administrative fine schedules. *Licensed* sidewalk vendors who violate local regulations may be fined \$100 for the first violation, \$200 for a second violation within one year of the first, and \$500.00 for each additional violation within one year of the first violation. Further, the law allows a local authority to rescind a permit issued to a sidewalk vendor upon the 4th and subsequent violations. *Unlicensed* sidewalk vendors who violate local regulations may be fined \$250 for the first violation, \$500 for a second violation within one year of the first, and \$1,000 for additional violations within one year of the first. Upon licensure of an unlicensed sidewalk vendor, SB 946 requires reduction of issued administrative fines by 80%.

SB 972

SB 972 was intended to promote economic inclusion while improving public health by modernizing the CRFC (part of the Health and Safety Code) so that sidewalk food vendors could actually obtain a permit and join the regulated vending economy. The CRFC sets uniform health and sanitation standards enacted by the State Department of Public Health for retail food facilities throughout the state and requires local health agencies (e.g., the San Bernardino County Department of Environmental Health) to enforce those provisions.

SB 972 created a new category in the CRFC for a “compact mobile food operation” (“**CMFO**”), which is defined as “a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal driven cart, wagon, showcase, rack or other non-motorized conveyance.” This definition covers most sidewalk vendors. As a result of SB 972, sidewalk vendors, and certain other CMFOs selling only prepackaged, non-potentially hazardous foods, or whole, uncooked produce are generally no longer required to obtain health permits from local health agencies.

SB 972 aligns the CRFC enforcement mechanisms applicable to sidewalk vendors and other CMFOs with those in SB 946. CMFOs required by local health agencies to obtain

permits are subject to fines of up to three times the cost of the permit in lieu of the administrative fines.

Mobile Vehicle Vending (Street Vending laws).

No cohesive set of state laws, other than certain sections of the California Vehicle Code and portions of the CRFC, regulate vending from motor vehicles on local streets. While such laws generally permit cities to enact reasonable time, place, and manner regulations for such motorized vending vehicles for public safety purposes, and further require such businesses to obtain permits from the local health agency to vend food, case law has made it clear that local agencies cannot totally ban such activities.

Planning Commission Action and Recommendation.

At its December 13, 2023 meeting, the City's Planning Commission reviewed Case Number PLAN23-00012, which proposed additions to Title 16 of the VMC to provide new regulations, licensing requirements, and operational standards for sidewalk vendors and mobile vehicle vendors in conformance with SB 946, SB 972 and related laws. The Case Plan also included amendments to existing provisions of Title 16 of the VMC relating to solicitors/peddlers, and various other conforming revisions.

During this meeting, City Staff and the City Attorney's office provided a slide presentation outlining SB 946, SB 972, and related state laws; local vendor requirements; licensing processes; and an initial map/list of locations in the City that conformed to the objective health, safety, and welfare sidewalk vending regulations contained in the proposed VMC amendments. Following a public hearing, the Planning Commission voted to recommend that the Victorville City Council ("**City Council**") adopt the proposed additions and revisions to VMC Title 16 via ordinance.

The Planning Commission also provided feedback and requested that the implementation of the proposed VMC amendment include an educational outreach component to facilitate vendor compliance and licensure. The Planning Commission's record of proceedings in Case Number PLAN 23-00012 is included in this report (Attachment A). After these proceedings, proposed Ordinance 2449 (Attachment B) was prepared, including said outreach component, and is now being presented for City Council consideration and adoption.

Resolution Nos. 24-010 and 24-012.

The City Council has by resolution previously adopted and recently amended its Master User Fee Schedule, which sets forth various fees and charges for City services. Proposed Resolution No. 24-010 (Attachment C) further amends the Master User Fee Schedule (Exhibits A and B to Resolution No. 24-010) to add new business licensing fees and fee categories for sidewalk and mobile vehicle vendors in accordance with the provisions of Ordinance No. 2449.

Proposed Resolution No. 24-012 (Attachment D) would establish certain business license fee reductions as noted in City Council Policy No. CP-24-01 (Exhibit A to Resolution No. 24-012). The fee reductions are intended to incentivize and increase compliance with

Ordinance No. 2449 and would be provided for first-time sidewalk and mobile vehicle vendor applicants.

Discussion:

Overview of Planning Commission Recommendation.

In accordance with the recommendation provided by the Planning Commission, staff is proposing the adoption of Ordinance No. 2449 to amend Title 16 of the VMC, including the addition of new Articles 12 and 13 within Chapter 7, to establish local licensing requirements and regulations with respect to sidewalk vendors and mobile vehicle vendors who seek to operate within the City's right-of-way.

Summary of Ordinance No. 2449.

The proposed amendments to the VMC, as embodied in attached Ordinance No. 2449, will establish licensing criteria and standards for the safe operation of stationary and roaming sidewalk vendors based on objective health and safety concerns focused on mitigating pedestrian, vehicular, infrastructure, and property access concerns. The proposed Ordinance will establish additional regulations as allowed by SB 946 to regulate sidewalk vending hours, locations, insurance requirements, licensure prerequisites, prohibited items, and the establishment of administrative fines and enforcement mechanisms as required by SB 946. The Ordinance will further revise outdated code provisions relating to peddlers and solicitors, create new definitions specific to sidewalk vendors and sidewalk vending activities, and establish licensing standards and operational requirements for mobile vehicle vendors (street vendors/food trucks).

City Compliance Efforts to Address Sidewalk Vendors.

Over the last few years, the City has continued to experience an increase in the operation of unlicensed sidewalk vendors who often prepare food such as raw poultry, fish or meat for on-site consumption, or sell other tangible goods.

As observed by City Code Compliance staff, sidewalk and other vending activity within the City generally occurs: (1) near busy residential areas; (2) within commercial intersections lacking a right shoulder for temporary or emergency vehicle parking, subsequently creating vehicle collision hazards; (3) on sidewalks that are less than 60 inches in width and lack the space required to meet to ADA accessibility needs; or (4) on privately owned developed or undeveloped parcels. Vendors use canopies, umbrellas, or shade covers that are often left unsecured resulting in flying hazards to motorists or pedestrians passing by due to the common prevailing winds in the City.

Often, sidewalk vendors operate stands, wagons, push-carts or similar non-motorized carts ("Vending Carts") that are at least 24 inches wide. When such Vending Carts are positioned at angles necessary to allow sidewalk vendors room to operate them, such Vending Carts will cover an area on the sidewalk in excess of 24 inches. Given that the majority of the sidewalks in the City are 60 inches wide, such Vending Cart operations do not leave a 36-inch accessible pathway as required by the ADA, thereby obstructing the safe passage of patrons and pedestrians.

Sidewalk Vendors also commonly operate on privately owned developed or undeveloped parcels which requires property owner consent and is regulated by a Temporary Use Permit, or requires a primary established use when operating on undeveloped lots.

Below are total number of unlicensed sidewalk vendors contacted and cited by Code Compliance officers over the last five years including stationary sidewalk vendors operating within residential zones:

Year	Total Vendor Cases	Located in Residential Zones
2019	78	27
2020	113	15
2021	196	134
2022	416	186
2023	386	115

Methodology on Proposed Regulations.

The proposed changes and additions contained in Ordinance No. 2449, including the methodology leading to the proposed amendments, are discussed below. The full text changes (including existing, deleted and new text) are in Attachment B.

City staff assigned to exploring and identifying regulatory and sidewalk vendor needs for the proposed sidewalk vendor ordinance consisted of members from the following City departments which provided field specific insight as listed below:

- Engineering Department, which has oversight to regulating right-of-way areas, traffic and city infrastructure such as sidewalk design and maintenance, traffic signs, fire hydrant locations, bus stop locations and familiarity with sight- distance requirements for motorists, evaluated site locations and suitability.
- Code Compliance Department provided direct field experiences relating to executed compliance actions, general sidewalk vending operations, common vending locations, observations related to vehicular traffic and pedestrian concerns including commonly used sidewalk vendor equipment, push carts supplies such as umbrellas, canopies and related signs.
- Business Licensing Division provided the application and licensing process and listed additional permit requirements based on the business type including establishing processes for ease of identification of licensed sidewalk vendors.

Through case work performed by City field staff and insight from City Engineering Staff with oversight as to City traffic design and regulations, staff identified the following City of Victorville regulatory needs with respect to sidewalk vending and mobile vehicle vendors (street vendors) and listed how the proposed Development Code amendment addresses these needs:

Regulatory Need	Addressed Health, Safety and Welfare Concerns
Vehicular Traffic Impacts	Regulates the location of sidewalk vending in areas where vehicular traffic does not have a right shoulder for emergency parking and therefore motorists are unable to pull over and complete a transaction without impacting the flow of traffic or preventing a vehicle to suddenly stop.
Obstruction to Public Safety Infrastructure, Public Transit Components	Establishes distance requirements to street signs, traffic lights, drive approaches, public transit / bus stops and fire hydrants to ensure vital traffic and life safety related components remain accessible and unobstructed.
Distractions to Motorist	Establishes regulations regarding the use of signs (including sizes and the use of flashing or blinking) lights and audible devices to minimize distraction to motorists
Pedestrians Impacts	Establishes sanitary requirements and refuse control requirements to ensure the safe and unobstructed access to pedestrians.
ADA Accessibility	Establishes required clearance area and disclosure of sidewalk vendor booth dimensions to ensure free passage of pedestrians and adherence to 36" minimum access size requirements as required by the American Disabilities Act of 1990.
Insurance Requirements	Establishes City insurance and indemnity requirements for sidewalk and street vendors operating on City right-of ways to mitigate potential claims against the City related to sidewalk and mobile vehicle vending activity.
Vulnerable Population	<p>Requires fingerprinting for the purposes of conducting criminal background investigations prior to City licensure to protect children, the elderly, and patrons in general from the risks inherent in making purchases from vendors with no established permanent places of business.</p> <p>Imposes distance requirements on sidewalk vending near schools to allow for unobstructed and undistracted access for students traveling to and from school.</p>
Public Health	Establishes requirements for food trucks and sidewalk vendors to secure all required County Public health permits prior to City licensure to ensure safe consumption of food by residents and other patrons.
Farmers Markets, Special Events and Public Parks	Prohibits sidewalk vendors operations within specified distances of a Certified Farmers Market, special events, or at a park when there is a signed agreement with a concessionaire for the sale of food or merchandise.

Ordinance 2449 contains regulations designed to meet the City's objective health, safety, and welfare concerns as required by applicable law and to further address the nine (9) listed local regulatory needs.

Licensing and Compliance Monitoring.

Compliance monitoring would be completed by the Code Compliance Division through the annual business license renewal process or through received complaints. Code Compliance Officers will monitor sidewalk vending cart operations in accordance with the regulations to be established by the proposed ordinance, which include an educational approach supported with printed resources. Identified violations would be enforced through the issuance of notices of violation and if violations continue, the issuance of administrative citations and assessment of administrative fines in accordance with the schedule contained in the Ordinance and permitted by SB 946, in addition to other remedies provided by law.

Assistance to Sidewalk Vendors to Achieve Licensure.

In an effort to assist and encourage sidewalk vendors to obtain city licensing and remain in compliance with related requirements, City staff has initially identified several locations within the City's commercial areas where sidewalk vendors could operate and remain in compliance with the City's proposed sidewalk vending regulations. Staff considered locations near areas commonly of interest to such vendors, which were selected to increase economic opportunities for sidewalk vending while also verifying that the pre-approved locations conformed to proposed Ordinance No. 2449. A list and map of these preliminary pre-approved locations is provided in this report as Attachment E. The map and list will be expanded as additional locations are reviewed and found to conform.

As discussed below, a City Council Policy (Policy No. CP-24-01) is proposed and, if approved, will provide vendor applicants with a one-time business license fee reduction upon initial application. The proposed policy also provides for a forfeiture of the reduction if the vendor subsequently is administratively cited for violating the VMC provisions established by Ordinance No. 2449.

As requested by the Planning Commission, an educational component will be implemented by Code Compliance field staff. The education component will include providing materials in English and Spanish explaining the local vendor regulations, information related to City licensing process and contact information, and contact information for related County or State offices when additional permits are required (County Health Department Permits or State seller's permits). The San Bernardino County Department of Environmental Health maintains a robust program designed to support food vendors (compact mobile food operations), provides permitting literature and is available to answer vendor inquiries.

Updated Master User Fee Schedule.

As part of the City's effort to maintain financial sustainability and recover costs for services, a cost-of-service analysis and a cost recovery evaluation has been conducted by an outside consulting firm and the resulting a Master User Fee Schedule, adopted by

the City Council in June of 2022, is reviewed periodically and updated annually based on the Consumer Price Index (CPI). On December 19, 2023, the City Council adopted Resolution Nos. 23-101 and VWD 23-016, representing the first update to the Master User Fee Schedule to incorporate the annual CIP. These changes became effective on January 1, 2024.

The Master User Fee Schedule amendment proposed in Resolution No. 24-010 is based on the rates/fees set forth in Master User Fee Schedule that became effective on January 1, 2024, and proposes to add two additional fee categories to the City's Business License Fees "VMC 115 - Sidewalk and Mobile Vehicle Vendors", to coincide with the adoption of Ordinance No. 2449.

The new categories added under Business License Fees are as follows:

- New Sidewalk Vendor, New Location
- New Mobile Vehicle Vendor, New Location
- New Sidewalk Vendor, Previously-approved Location
- New Mobile Vehicle Vendor, Previously-approved Location

These categories directly coincide with the new business license types created by Ordinance No. 2449. Adding these new fee categories allows the City to charge fees directly related to the application type and to recover license processing and site evaluation costs. A new sidewalk vendor seeking a license to operate in a location that has not yet been reviewed by the appropriate City staff to ensure conformance with the requirements of Ordinance 2449 will require a higher level of review. A vendor seeking a license to operate at a location that is among those previously reviewed and approved by City staff would not require this same level of review; therefore, the initial licensing fee is lower.

Staff finds the proposed new license categories and fees proposed to be adopted by Resolution No. 24-010 are needed to recover the cost associated with licensing new sidewalk and mobile vehicle vendors.

Vendor Business License Fee Reduction Policy No. CP-24-01.

Proposed Resolution No. 24-012 and Council Policy No. CP-24-01 (Exhibit A thereto) would provide a fee discount to first-time sidewalk and mobile vehicle vendors at the time of license application. The proposed reduction policy is designed to incentivize these vendors to seek licensure in accordance with the new regulations in Ordinance No. 2449 and to remain in compliance with those regulations to avoid forfeiture and re-assessment of the one-time fee reduction. Forfeiture and re-assessment of the fee would occur if a vendor violates the new vending regulations and receives an Administrative Citation that is not successfully appealed during the first year of the license period.

Encouraging full compliance and adherence to these new regulations is anticipated to result in code compliance monitoring cost savings and discourage bad actors from operating without these requirements. Additionally, initial City licensing fee reductions may aid prospective sidewalk and mobile vehicle vendors with funding costs they may

incur with respect to making expensive apparatus (Vending Cart) modifications that are often the reason certain vendors do not pursue additional permits.

Conclusion

Staff finds that the proposed Ordinance and Resolutions meet the goal of helping sidewalk vendors to achieve licensure within the City while also addressing the health, safety, and welfare concerns that arise from the operations of sidewalk and mobile vehicle vendors. The newly added user fee categories provide a lower rate for licensed vendors to vend in pre-assessed locations that are often of interest to sidewalk vendors. Additionally, the Business License Fee Reduction policy provides aid to vendors with licensing costs and incentivizes compliance during vendor operations.

Environmental Assessment.

Adoption of Ordinance No. 2449 will not have an effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA guidelines, as there is no possibility that the proposed amendment will have a significant effect on the environment inasmuch as the proposed amendment will regulate street vending allowances provided by State law, which does not modify existing codes in a manner that will negatively affect the environment.

Adoption of Resolution Nos. 24-010 and 24-012 are statutorily exempt from CEQA review pursuant to Section 15273 of the CEQA Guidelines, which provide an exemption for the establishment or modification of fees and charges by public agencies that such agencies find are for the purpose of meeting their operating expenses.

Staff remains available for any questions or comments the City Council may have.

Attachments:

- A. Planning Commission Record of Proceedings
- B. Ordinance No. 2449
- C. Resolution No. 24-010
- D. Resolution No. 24-012
- E. Map of Pre-Approved Sidewalk Vending Locations