



Staff Report

TO: City Council
FROM: Christina Taylor, Deputy City Manager
DATE: February 6, 2024
SUBJECT: Public Hearing and Consideration of Amendments to Beaumont Municipal Code Chapter 5.64 Peddlers and Chapter 5.66 Sidewalk Vending

Description Proposed amendments to Beaumont Municipal Code Chapter 5.64 Peddlers and Chapter 5.66 Sidewalk Vending to ensure public health, safety and welfare.

Background and Analysis:

On November 21, 2023, the City Council held a meeting regarding its current street vendor ordinance (Chapter 5.64 “Peddlers,” and Chapter 5.66 “Sidewalk Vending”), including proposed amendments recommended by the City Attorney and Staff. During that meeting, the City Council requested certain amendments/clarifications be made to the draft Ordinance for consideration.

Per City Council request, the draft ordinance (attached as Exhibit “A”), does the following:

- Prohibits stationary sidewalk vendors from vending in areas that are zoned exclusively residential. (Govt. Code § 51038(b)(4)(B).) Under State law, the City cannot prohibit roaming sidewalk vending in residential areas; however, it can prohibit stationary sidewalk vendors from operating in residential zones.
- Clarifies that the hours of operation in non-residential areas shall not be more restrictive than the hours of operation imposed on other businesses or uses on the same street (Govt. Code § 51038(c)(1)), and that the limitations on public property are to the fullest extent permitted by law.
- Prohibits stationary sidewalk vendors from vending in the park where the operator of the park has signed an agreement for concessions with the City that exclusively permits the sale of food or merchandise by the concessionaire. (Govt. Code § 51038(b)(2)(A).)
- Prohibits sidewalk vendors in areas located within 200 feet of a permitted certified farmers’ market, or permitted swap meet, during the duration of the market or swap meet, or an event held pursuant to a Temporary Special Permit

during the duration of the event, provided the City provides the sidewalk vendors any notice, business interruption mitigation, or other rights the City provided to any affected business or property owners under the City's Temporary Special Permit. (Govt. Code § 51038(d)(1) and (d)(2).)

- Adds applicable definitions.

In addition to the above, City Council requested proposed amendments be added permitting the impoundment of vending carts and equipment under specified circumstances. State statutes proscribe what enforcement procedures local jurisdictions may implement for violations of street vendor programs, such as the Ordinance.

Specifically, Government Code § 51039 states, as relevant:

(1) A violation of a local authority's sidewalk vending program that complies with Section 51038 is punishable **only** by the following:

(A) An administrative fine not exceeding one hundred dollars (\$100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

(i) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.

(ii) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.

Nothing in the state law expressly allows a local jurisdiction to impound carts, equipment, or merchandise for violations of a street vendor ordinance or permit program. Although several jurisdictions have implemented procedures for impounding sidewalk vendor carts, equipment, perishable goods, etc., such ordinances have been somewhat controversial, and importantly, have not yet been tested in court. Thus, it is unclear whether impoundment would be enforceable under current law. In December 2023, a lawsuit was filed by street vendors against the City of Fontana related to its street vending ordinance, alleging that the City engaged in discriminatory practices that included discarding vendors' food and using excessive force. In light of this ongoing litigation, the City Attorney would recommend taking a wait and see approach before

implementing any such impoundment provisions. Nevertheless, to the extent Council requests impoundment language be added now, the following may be added at Section 5.66.170, with or without change.

5.66.170 Impoundment.

- A. The City may impound a sidewalk vendor's vending cart, food, equipment, utensils, goods and/or merchandise ("Materials") as follows:
1. The Materials are abandoned.
 - a. Materials shall be considered abandoned if any of the following conditions are met:
 - i. A City official observes such materials unattended on public property for a period of at least one consecutive hour. A City official may satisfy the one-hour observation period by placing a marking on or attaching a notice to the Materials, and then observing and documenting that marking or notice is undisturbed after the passage of at least one hour.
 - ii. The vender affirmatively disavows ownership of the Materials. The placement of Materials in the care of another does not constitute abandonment.
 - b. An enforcement officer may impound such abandoned Materials only after the enforcement officer has made a reasonable attempt to locate the owner of such Materials at the time the enforcement officer first observes the unattended Materials.
 - c. Prior to impoundment, any person claiming ownership of the unattended Materials may recover and retain such items on site for vending purposes upon providing a valid vendor permit. Such a vendor may be cited for leaving Materials unattended in violation of this Chapter.
 2. The Materials are displayed, offered, or made available by a vendor who does not possess a valid City permit, or is otherwise operating in violation of this Chapter, **and** the Vendor has previously received three or more citations under this Chapter within the prior 24-month period.
 3. The Materials are creating an imminent and substantial danger or environmental hazard to the health, safety and welfare of the public or property at the location of the vending cart, including but not limited to, vending in a manner that blocks or obstructs the free movement of pedestrians on sidewalks, or failing to maintain the minimum distances required by this Chapter and/or State or Federal law; discharge of oil, grease or other slippery substances on the street or sidewalk without any effort to maintain best management practices; using

unapproved portable cooking equipment, heating element, gas-fueled appliance, generator, or any open flame; during an urgent or emergency public safety event or incident; lack of a fire extinguisher.

4. Materials are impounded as evidence of a crime or booked as property after the arrest of any Vendor involving any City, county, state or federal law or regulation. Such Materials shall be stored and released in accordance with the procedures set forth in the California Penal Code and/or other applicable state law.
- B. Except in the case of abandoned Materials, at the time of impoundment, the City official shall provide to the vendor a receipt that includes the date and time the Materials were impounded and a complete description of the impounded Materials, including any perishable items and the storage of which raise health or safety concerns. The receipt shall also include instructions of how to reclaim the impounded Materials and notify the Vendor that failure either to reclaim the Materials during the 90-day holding period or timely appeal the impoundment may result in forfeiture of the impounded Materials to the City.
 - C. In the case of abandoned Materials, at the time of impoundment, the City official shall document the date, time period, and location the abandoned Materials were observed, the circumstances that support the City official's finding of abandonment, any reasonable attempt to locate the owner of such Materials, and a complete description of the Materials, including any perishable items and the storage of which raise health or safety concerns. This documentation shall be maintained by the City with the impounded Materials. If the City official does not have knowledge of the owner of the impounded Materials, the City shall make reasonable efforts to identify the owner. If the owner is identified or otherwise known, the City shall mail, by first class mail, the official's documentation regarding the impounded Materials, as well as instructions of how to reclaim the impounded Materials and notify the Vendor that failure either to reclaim the Materials during the 90-day holding period or timely appeal the impoundment may result in forfeiture of the impounded Materials to the City.
 - D. City Retention of Impounded Materials. Impounded Materials shall be held by the City for a period of at least 90 days. Unless a person claiming ownership has timely appealed or reclaimed the impounded Materials as provided for herein, the impounded Materials will be forfeited to the City after the expiration of the 90-day holding period. Notwithstanding the foregoing, the City may immediately dispose of impounded Materials that are perishable and/or the storage of such Materials raises health or safety concerns.
 - E. Reclaiming Impounded Materials. Prior to the expiration of the 90-day holding period, or before any appeal related to the impoundment becomes final, any person claiming ownership of Materials that have been impounded may reclaim such Materials upon payment of impound fees, as may be set by City Council by

resolution; prior proof of ownership; and a vending permit valid as of the date the Materials were impounded. Owners may recover impounded goods without showing a vending permit valid as of the dates the Materials were impounded, but may be subject to citation for vending without a permit.

- F. Appeals. Any person claiming ownership of impounded Materials may contest the impoundment by filing a timely appeal with Administrative Appeals Board. Impounded Materials that are the subject of a timely appeal shall be held by the City until the later of (a) the expiration of the 90-day holding period, or (b) the appeal, including any judicial review, becoming final. Thereafter, provided the impoundment is upheld on appeal and/or the Materials are not reclaimed, the impounded Materials will be forfeited to the City.
- G. Materials Forfeited to the City. After impounded Materials have been forfeited to the City, the City may dispose of such Materials in its sole discretion.

Fiscal Impact:

The cost to prepare the staff report and ordinance amendments is approximately \$1,500.

Recommended Action:

Hold a Public Hearing; and

Waive the first full reading and approve by title only, “An Ordinance of the City Council of the City of Beaumont California Amending Chapter 5.64 Peddlers of the Beaumont Municipal Code”; and

Waive the first full reading and approve by title only, “An Ordinance of the City Council of the City of Beaumont California Amending Chapter 5.66 Sidewalk Vending of the Beaumont Municipal Code”.

Attachments:

- A. Ordinance
- B. Chapter 5.64 Peddlers Redline
- C. Chapter 5.66 Sidewalk Vending Redline