

7.3. SIDEWALK VENDING PERMIT



DATE: June 03, 2024

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager
Marlene Subhashini, Assistant City Manager

FROM: Sofia Mangalam, Community Development Director
Derek Schweigart, Parks and Recreation Director

DEPARTMENT: Community Development/Parks and Recreation

SUBJECT: ORDINANCE ESTABLISHING NEW FEES FOR SIDEWALK
VENDING PERMIT AND FINES, NON-RESIDENT PARK
RENTAL FEES AND PARK CANCELLATION FEES

RECOMMENDATION

It is recommended that the City Council introduce by title only, and by motion waive further reading of an uncodified Ordinance establishing new fees for Sidewalk Vending Permit and fines, Non-Resident Park Rental Fees and revising the existing Park Cancellation Fees and finding the ordinance exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(b)(3).

EXECUTIVE SUMMARY

The Community Development Department recommends establishing new fees for Sidewalk Vending Permit and fines, and the Parks and Recreation Department recommends establishing non-resident park rental fees and revising the existing park cancellation fee.

BACKGROUND/ANALYSIS

Community Development Department: Sidewalk Vending Permit Fee and Fines

Senate Bill (SB) 946 authorizes cities to adopt requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns. On [May 6, 2024](#), the City Council adopted an Ordinance adding

a New Chapter 12.44, "Sidewalk Vending Program," to establish locations and regulations applicable to sidewalk vendors. The Sidewalk Vending Program, once effective, will require sidewalk vendors (both stationary and roaming vendors) to obtain a Sidewalk Vending Permit ("Permit") to ensure that sidewalk vendors operating within the City are complying with certain objective regulations that are directly related to public health, safety, and welfare.

User fees recover costs associated with the provision of specific services benefiting the user, thereby reducing the use of General Fund monies for such purposes. In addition to collecting the direct cost of labor and materials associated with processing and administering user services, it is common for local governments to recover support costs. There will be some staff time involved with the processing, issuance and enforcement of these permits.

Following are examples of sidewalk vending permit application fees charged by a few cities:

- City of Burlingame: \$100 ([link to master fee schedule, page 27](#))
- City of San Bruno: \$505 includes rate plus applicable fingerprinting and Department of Justice fees ([link to master fee schedule, page 27](#))
- City of Redwood City: \$186 permit fee ([link](#))
- City of Hayward: \$0 ([link](#))

Staff is anticipating up to 30 minutes of application intake by personnel from the Community Development Department (Permit Technician I/II and/or Code Enforcement Officer) and 15 minutes of processing time by personnel (Admin Assistant) from the Finance Department. As part of the processing and administering services, City staff will need to review the application and submitted materials and issue the permit or issue a response denying the permit. Staff recommend setting the sidewalk vending permit fee at \$100, which equates to 45 minutes of staff time at the adopted rate of \$146-\$153/hour and \$133/hour.

The 'Sidewalk Vending Program' will be effective 30 days from the second reading, which occurred on May 06, 2024. Including the fees for the Permit will allow for the ordinance's successful implementation. Thus, staff is recommending that the Sidewalk Vending Permit Fee of \$100 be adopted.

In addition, the adopted Ordinance includes a section on enforcement that lists fines for violations of Chapter 12.44 of the Municipal Code consistent with the provisions in Section 12.44.100 of the Ordinance adopted on May 6th, including vending without a valid vending permit and administrative fines as follows:

- (i) An administrative fine of two hundred fifty and no/100ths (\$250.00) dollars for a first violation.
- (ii) An administrative fine of five hundred and no/100ths (\$500.00) dollars for a second violation within one year of the first violation.
- (iii) An administrative fine of one thousand and no/100ths (\$1,000.00) dollars for a third violation and each subsequent violation, within one year of the first violation. Upon proof of a valid permit issued by the City before such fines are due, the city would

reduce the amount of the fines to one hundred and no/100ths (\$100.00) dollars for the first violation, two hundred and no/100ths (\$200.00) dollars for the second violation, and five hundred and no/100ths (\$500.00) dollars for each violation thereafter.

The section 12.44.100 also includes fines for all violations of the chapter other than vending without a valid vending permit as outlined above, including:

- (i) An administrative fine of one hundred and no/100ths (\$100.00) dollars for a first violation.
- (ii) An administrative fine of two hundred and no/100ths (\$200.00) dollars for a second violation within one year of the first violation.
- (iii) An administrative fine of five hundred and no/100ths (\$500.00) dollars for a third violation within one year of the first violation.
- (iv) An administrative fine of five hundred and no/100ths (\$500.00) dollars for a fourth and each subsequent violation, and revocation of the vending permit. Revocation proceedings will be conducted in accordance with the rules and regulations established by the city.

It shall be noted that even though the City Council adopted an Ordinance for the Sidewalk Vending Program, including a list of fines for violations, these fines were not incorporated into the Master Fee Schedule. Thus, staff is recommending that the above listed fines be included in the Master Fee schedule.

Parks and Recreation Fees: Non-Resident Park Rentals and Park Cancellation Fees

At the March 25, 2024, Budget Study Session, the City Council reviewed and provided direction for City staff to update the Master Fees and Service Charges Schedule ("Schedule"). The updated schedule included fees and charges adjustments from Parks and Recreation. The proposed fees and service charges were passed and adopted per Resolution No. 2024-32. The City Council also provided direction to Parks and Recreation staff to explore both non-resident rates for park rentals and percentage-based park cancellation fees.

Non-Resident Park Rental Fees

Per City Council direction, staff researched non-resident park rental rates and park cancellation fees for neighboring cities including Belmont, Burlingame, Menlo Park, Redwood City, San Bruno, San Carlos, and South San Francisco (Attachment 2). Non-resident Park reservation policies, rates and cancellation fees vary widely among neighboring cities. It was noted however, that every city except Foster City allows non-resident park reservations. Under Foster City's existing rental policy, non-residents can only rent Leo J. Ryan Park Hilltop picnic area and it must be 10 months in advance. Residents are allowed to book a year in advance. Staff recommends allowing non-residents to rent currently rented City parks up to 90 days in advance at 25% above the resident rate. If approved, staff will align the policy to be 90 days in advance for non-residents for all reservable parks. Residents will continue to receive priority in that they will

be allowed to rent parks up to a year in advance.

Park Cancellation Fees

Park cancellation fees vary widely among neighboring cities (Attachment 2). For example, the City of San Mateo does not charge a cancellation fee, while in the City of Belmont, park reservation fees are non-refundable. The cities of San Carlos, Burlingame, and San Bruno allow cancellations at least 14 days in advance of the reservation date minus fees. Under Foster City's policy, cancellations made more than 7 days prior to the event date receive a full refund minus a \$10.40 administrative fee. Renters are charged a \$26 cancellation fee for park rentals cancelled less than seven (7) calendar days in advance of the reservation.

Staff recommends renters receive full refund minus administrative fee (\$11 for FY 24/25) if cancellation occurs more than 14 business days in advance. Cancellation requests received less than 13 business days in advance will result in a 50% refund minus administrative fee, and requests received less than 2 business days in advance will result in no refund. This new cancellation fee will help deter last-minute park cancellations, ensuring that staff can rent the park to other users.

The City of Foster City has the authority to impose fees, charges, and rates to offset the costs for municipal services and regulatory programs under its police powers under California Constitution Article XI section 7. Cities can adopt fees by resolution or ordinance. The proposed fees are being proposed as an ordinance, in an abundance of caution, to address the requirements in the Taxpayer Protection and Government Accountability Act ("Act"), which will require all fees and charges, adopted after January 1, 2022, to be adopted by ordinance if the Act is passed by the voters of the State.

The proposed Ordinance would not be codified in any Chapter of the City's Municipal Code and provides that it can be updated or revised by resolution, if necessary. Once effective, the Ordinance provides that the fees will automatically be incorporated into the City's Fiscal Year (FY) 2024-2025 Master Fees and Service Charges Schedule.

CEQA

The proposed amendments to the fee schedule are exempt pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of having a significant effect on the environment.

FISCAL IMPACT

The revenue received for the Sidewalk Vending Permit Fee would offset the costs of administering the program and costs relating to enforcement of the Sidewalk Vending Program during the city organized special events on weekends and holidays.

It is not known at this time what additional revenue will be gained by allowing non-resident reservations for parks. For comparison however, if 5% of park rentals were non-resident

reservations at 25% over the resident rate, the additional revenue would be about \$2,218 (using FY 22/23 park rental revenue of \$44,362). Staff anticipates additional revenue gained from updating the park cancellation fees would be negligible (less than \$200 fiscal year).

CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Smart Planning, Development, and the Local Economy

ATTACHMENTS:

Attachment 1 – Ordinance

Attachment 2 – Exhibit A

ORDINANCE NO. _____

AN UNCODIFIED ORDINANCE OF THE CITY OF FOSTER CITY ESTABLISHING NEW FEES FOR SIDEWALK VENDING PERMIT AND FINES, NON-RESIDENT PARK RENTAL FEES, AND REVISING THE EXISTING PARK CANCELLATION FEE AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINE SECTION 15061(B)(3)

CITY OF FOSTER CITY

WHEREAS, the City of Foster City has the authority to impose fees, charges, and rates to offset the costs for municipal services and regulatory programs under its police powers under California Constitution Article XI section 7; and

WHEREAS, it is the general policy of the City to charge for the full costs of services provided by City Staff when such services benefit individual users rather than members of the community as a whole; and

WHEREAS, to better achieve the City's cost recovery goals, the City Council deems it advisable and in the best interests of the City to adopt and update certain fees, included in the City's Master Fees and Service Charges; and

WHEREAS, the Community Development Department recommends establishing new fees for Sidewalk Vending Permit for administration and enforcement of the Sidewalk Vending Program; and

WHEREAS, the Parks and Recreation Department recommends establishing non-resident park rental fees to allow more use by non-residents and revising the existing park cancellation fee; and

WHEREAS, the Fees comply with Article XIII-C of the California Constitution because they are either (1) charges imposed for a specific government service or product that are not imposed on those not receiving the service or product and do not exceed the City's reasonable costs of providing the service or product; or (2) charges imposed for the reasonable regulatory costs to the City for issuing licenses and permits, performing investigations, inspections, and audits, and administrative enforcement and adjudication thereof; and

WHEREAS, if enacted, the Taxpayer Protection and Government Accountability Act ("Act") will require all fees and charges, adopted after January 1, 2022, to be adopted by the City Council by ordinance; and

WHEREAS, the City Council may adopt any fee or charge by ordinance if it is permitted to adopt the fee or charge by resolution; and

WHEREAS, the City Council desires to comply with the Act to ensure that the proposed fees will remain valid in the event the Act is adopted; and

WHEREAS, the proposed fees are “exempt charges,” within the meaning of the Act because they are (1) reasonable charges for specific local government services or products provided directly to the payor that are not provided to those not charged, and they do not exceed the actual costs to the local government of providing the service or product; or (2) charges for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing the adopted Fire Code, or adjudication thereof; and

WHEREAS, on May 22, 2024, a public hearing notice was duly published and posted in three public places pursuant to California Code Section 65090 for the City Council public hearing on June 03, 2024.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FOSTER CITY DOES ORDAIN AS FOLLOWS:

Section 1. The City Council does hereby find and determine based upon the aforementioned Record as follows:

1. The foregoing Recitals are true and correct and are incorporated herein by this reference.
2. The Ordinance is exempt pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of having a significant effect on the environment as these are administrative matters.

Section 2. Amendment. The new fees for Sidewalk Vending Permit, non-resident park rentals and revised park cancellation fee as set forth in the attached Exhibit A, , which is attached hereto and incorporated herein by reference (hereinafter “Fees”), are hereby approved and adopted as the applicable fees that the City of Foster City.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council does hereby declare that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption. Once effective, the Fees shall be incorporated into the City’s Fiscal Year (FY) 2024-2025 Master Fees and Service Charges Schedule.

Section 5. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

Section 6. Conflicts. If there are conflicts between the Fees adopted in this Ordinance and the fees adopted by any prior resolution or fee schedule, the Fees adopted pursuant to this Ordinance shall control. This Ordinance does not supersede any previous resolution or ordinance setting fees that are not included in Exhibit A to this Ordinance.

Section 7. Revisions to Fees. The Fees set forth in Exhibit A may be revised, amended or updated from time to time by resolution or ordinance of the City Council.

This Ordinance was introduced and read on the 3rd day of June, 2024, and passed and adopted on the ____ day of ____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

PATRICK SULLIVAN, MAYOR

ATTEST:

PRISCILLA SCHAUS, CITY CLERK

Exhibit A

1. Sidewalk Vending Permit

Ref. No.	Revenue Title	Fee
CDP-24	Sidewalk Vending Permit Fee (one year permit)	\$100
CDP-25	Sidewalk Vending Administrative Fines For vending without a valid vending permit the following fines shall be applicable:	
	(i) first violation.	\$250.00
	(ii) second violation within one year of the first violation.	\$500.00
	(iii) third violation and each subsequent violation, within one year of the first violation.	\$1,000.00
	Upon proof of a valid permit issued by the City before such fines are due, the city would reduce the amount of the fines to one hundred and no/100ths (\$100.00) dollars for the first violation, two hundred and no/100ths (\$200.00) dollars for the second violation, and five hundred and no/100ths (\$500.00) dollars for each violation thereafter.	
CDP-26	For all violations of Foster City Municipal Code Chapter 12.44 other than vending without a valid vending permit as outlined above:	
	(i) first violation.	\$100.00
	(ii) second violation within one year of the first violation.	\$200.00
	(iii) third violation within one year of the first violation	\$500.00
	(iii) An administrative fine of five hundred and no/100ths (\$500.00) dollars for a fourth and each subsequent violation, and revocation of the vending permit. Revocation proceedings will be conducted in accordance with the rules and regulations established by the city.	\$500.00
	All fines shall be assessed and imposed in accordance with Section 12.44.100 of the Foster City Municipal Code	

2. Non-Resident Park Rental Fees

Non-Residents shall rent currently rented City parks up to 90 days in advance at 25% above the resident rate.

3. Park Cancellation Fees

All Park renters shall receive a full refund of Park Rental Fees minus the then applicable Administration Fee in effect if cancellation occurs more than 14 business days in advance. Cancelling between 13 to 3 business days in advance will result in a 50% refund of the Park Rental Fees minus the then applicable Administration Fee in effect. If a park rental cancellation occurs less than 2 business days prior to reservation date, the Park Cancellation Fee shall be the entire cost of the park rental and no refund shall be given.

Foster City Park Rental Rates

Park	FY 24/25	FY 24/25 Proposed Non-Resident Rate
	Resident Rate	
Gull, Marlin, Erckenbrack	\$82	Rate + 25%
	Capacity 50 people	
Boothbay	25-50 people \$137	Rate + 25%
	51-100 people \$191	
	101-150 people \$246	
Leo Ryan Patio Area	\$82	Rate + 25%
	Capacity 50 people	
Leo Ryan Amphitheater	1-100 people = \$164 flat fee	Rate + 25%
Four (4) hour maximum rental time	101-150 = \$273 flat fee	
Leo Ryan Gazebo Two (2) hour maximum rental time	\$44	Rate + 25%
	Capacity 25 people	
Leo Ryan Grass West	\$44	Rate + 25%
	Capacity 25 people	
Bridgeview and Shorebird Park	\$44	Rate + 25%
	Capacity 30 people	
Catamaran, Farragut, Edgewater Park	\$71	Rate + 25%
	Capacity 30 people	
Food truck fee	\$82 per park per truck	\$82 per park per truck

- Parks are available to rent to Foster City residents one year before the event date, and to non-residents 90 days before the event date.

Current (FY 23/24) Parks cancellation fee

- Cancellations made more than 7 days prior to the event date will receive a full refund minus a \$10.40 processing fee. A \$26 cancellation fee is charged for park rentals cancelled less than 7 days in advance.

Proposed Parks cancellation fee

- Renters receive a full refund minus admin fee (\$11) if cancellation occurs more than 14 business days in advance. Canceling 13-3 business days in advance will result in a 50% refund and the loss of admin fee. Less than 2 business days cancellation will result in no refund.

[END OF EXHIBIT A]