

REPORT OF THE CHIEF LEGISLATIVE ANALYST

October 15, 2018

TO: Honorable Members of the Los Angeles City Council

FROM: Sharon M. Tso *SMT*
Chief Legislative Analyst

Council File No.: 13-1493
13-1493-S4
13-1493-S5
Assignment No.: 18-10-0933

Proposed City of Los Angeles Sidewalk Vending Program

SUMMARY

On April 17, 2018, the Los Angeles City Council adopted Rules and Regulations for the establishment of a Sidewalk Vending Program (C.F. 13-1493). The City Council also requested the City Attorney to prepare a draft ordinance, and instructed City staff to report with additional information related to a scope of work, an appeals process, and creation of sidewalk vending districts, among others. The City Attorney transmitted a draft sidewalk vending ordinance on June 2, 2018. Subsequently, a Motion (Price-Huizar; C.F. 13-1493-S4) (Attachment 1) was introduced instructing this Office to report on the impact of Senate Bill (SB) 946 (Lara) which allows sidewalk vending Statewide. The bill was signed by Governor Brown on September 17, 2018 (Attachment 2).

On September 25, 2018, a second Motion (Price-Huizar; C.F. 13-1493-S5) (Attachment 3) was introduced requesting the City Attorney to draft a new ordinance consistent with SB 946, including parks, and to remove sections related to Rules and Regulations to be administered by the Department of Public Works, Bureau of Street Services (BSS). The motion further instructed the (BSS) to review SB 946 and submit revised Rules and Regulations consistent with the intent of the Council, and in compliance with State law, for Council approval.

This report provides: 1) a brief overview of actions previously adopted by Council; 2) an analysis of SB 946 and its impact on the City's proposed program; 3) options to achieve compliance by January 1, 2019 as required by State law; and 4) recommendations.

RECOMMENDATIONS

That the City Council:

- 1) Adopt Motion (Price-Huizar; C.F. 13-1493-S5) relative to vending in the public right-of-way and vending parks, in compliance with State law (SB 946) and in accordance with Council action of April 17, 2018, as follows:
 - a. Request the City Attorney to draft a new Sidewalk Vending Ordinance(s), that addresses vending in the public right-of-way and vending parks, in accordance with previous Council action, by November 15, 2018;
 - b. Request the City Attorney to remove sections related to Rules and Regulations which shall be part of a separate document governed by the Department of Public Works, Bureau of Street Services (BSS); and,

- c. Instruct BSS, with the assistance of the City Attorney and CLA, to review SB 946 and submit Rules and Regulations consistent with the intent of the Council, and in compliance with State law, for Council approval by November 15, 2018.
- 2) Instruct the Office of the Chief Legislative Analyst (CLA) to prepare and release a Request for Proposals for a third party service provider, as previously adopted by Council and in compliance with State, to manage and operate the Sidewalk Vending Program.

FISCAL IMPACT

Approval of the recommendations in this report will not result in a fiscal impact. On April 17, 2018, the City Council instructed the City Administrative Officer to report with a fee study and program budget. However, should the City Council wish to proceed with implementation of a permit-based vending program, the CAO should be requested to report with a fee study and program budget consistent with Council action. Please note that the City may only charge fees to recover costs if a permit-based system is established.

DISCUSSION

Overview

In April 2018, Council adopted Rules and Regulations for sidewalk vending largely developed with the assistance of the BSS and the City Attorney with respect to time, place, and manner. Council also adopted a framework for a permit system consisting of two stationary vendors per blockface in commercial and industrial areas of the City, and roaming food vendors in residential areas¹. Roaming vendors would not be permitted in commercial and industrial areas and stationary vendors would not be allowed in residential areas, subject to restrictions on zoning, placement, and operations. The proposed framework would also allow for a process to establish Special Sidewalk Vending Districts based on the desire of a Council District to adopt regulations to restrict, prohibit, or expand vending in such areas based on health and safety. Lastly, the Council adopted a progressive two-tiered compliance program with different penalty structures for permitted and unpermitted vendors to be enforced through the City's Administrative Citation Enforcement (ACE) program.

State Law – SB 946

On September 17, 2018, Governor Brown signed SB 946 (Lara) which establishes Statewide governance of vending in the public right-of-way and in parks. Local jurisdictions that wish to enforce violations against sidewalk vending would be required to first adopt Rules and Regulations consistent with SB 946. While the law does not require a permit-based system to comply, local jurisdictions must, at minimum, adopt Rules and Regulations by ordinance or resolution. Below is a summary of key provisions of SB 946 and how they would impact the City's previously adopted sidewalk vending Rules and Regulations:

- Vending on City Sidewalks

The City may not require vendors to operate within specific parts of the public right-of-way, except when that restriction is related to health, safety, or welfare concerns. Local jurisdictions may adopt requirements regulating time, place, and manner, including a permit-based system.

¹ Council action to establish a vending program based on a two-per blockface system was on January 31, 2017.

- 2 Per Blockface Provision
The City may not place limits on the overall number of permits. As stated above, local jurisdictions may not require vendors to operate within specific parts of the public right-of-way. However, it may be possible to restrict the number of vendors per block, on a case by case basis, pursuant to safety, health, and welfare justifications.
- Vending in Residential Areas
The City may prohibit stationary vending in residential areas but not roaming vending. This is consistent with the City's existing proposal.
- Adjacent Business Letter (Business Veto)
The City may not require approval of any non-governmental entity. This is consistent with the City's existing proposal.
- Farmers' Markets and Swap Meets
The City may restrict or prohibit sidewalk vending near special events, Farmers' Markets, and Swap Meets (Section 51038 (d) (1)). Should the Council wish to restrict vending near Farmers' Markets and Swap Meets, it is recommended that the Bureau of Street Services be instructed to report with recommendations.
- Special Events
The City may restrict or prohibit vending within the immediate vicinity of an area designated for a temporary special permit (Section 51038 (d) (2)). A temporary special permit is usually issued for special events such as filming, parades or outdoor concerts. The City's existing proposal gives priority to film and special event permits.
- Vending in Parks
The City may not prohibit vending of food and merchandise in parks. However, the City may prohibit stationary vending in parks if the park has a concession agreement. The City may impose additional regulations necessary to ensure the public's use and enjoyment of natural resources or recreational opportunities and to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park. Los Angeles Municipal Code Section 63.44 prohibits vending in parks. It is recommended that the City Attorney be requested to prepare the new ordinance(s), including LAMC Section 63.44, to comply with State law.
- Monitoring and Compliance
State law provides a two-tiered penalty structure for permitted and unpermitted vendors. This structure is similar to the City's proposed penalty structure. However, State law contains the following additional provisions:
 - Failure to pay fine would not lead to infraction or misdemeanor.
 - Additional fines or fees may not be assessed.
 - City may allow community service, waive fine, or offer alternative to paying fine.
 - A violation occurring after 12 consecutive months with no violation shall be considered a first violation.

- Ability-To-Pay Determination.

Local jurisdictions are required to offer an Ability-To-Pay Determination to individuals who are issued a violation. Individuals who are determined to be under the federal poverty line would only be responsible for 20 percent of the penalty.

- Number of Permits

Council action of April 17, 2018 allowed for vendors to apply for up to three permits. However, under State law, individuals may apply for any permits that the City offers.

SB 946 provides flexibility for jurisdictions to design programs based on public safety, health, and welfare. However, some provisions have required clarification. For example, Section 51038 (b)(1) states that “A local authority shall not require a sidewalk vendor to operate within specific part of the right of way, except when the restriction is directly related to objective health, safety or welfare concerns.” One interpretation may be that State law now prohibits the issuance of permits based on location. An alternative interpretation may be that jurisdictions may be able to justify a location-based permit system if findings can be made such as the need to mitigate conflict between vendors or prevent extortion to meet the “safety and welfare” requirements of the law. Our Office has sought clarification from the author’s office on this question who have stated that local jurisdictions may provide location-based permits if supported by health, safety, and welfare findings.

The City Council and the Economic Development Committee have conducted a robust community engagement process through which stakeholders have had opportunities to voice concerns and raise questions with respect to vending. One of the areas where the community seemed to be in agreement with was that, in the event that Council opted to establish a stationary vending program, the program requires vendors to maintain their respective areas clean and sanitary.

Permit-Based System vs. Regulatory Vending System

State law allows local jurisdictions to establish either a permit-based vending system or regulatory vending system. A permit-based sidewalk vending program is consistent with Council action of April 17, 2018 (C.F 13-1493). Under a permit-based system, the City could issue permits based on location (i.e. sidewalks and parks) and may issue permits for roaming vendors anywhere in the City based on health, safety, and welfare concerns.

Under a regulatory vending system, the City could request BSS to review and prepare Rules and Regulations consistent with State law. These would serve to guide vendors as they conduct vending activities with respect to place, time, and manner. For example, vendors would be able to choose a vending location on a first-come, first-served basis and could be required to follow rules such as no vending on exits or entryways, no blocking the sidewalk in compliance with the American Disabilities Act (ADA), and showing proof of health permits, business license, and liability insurance.

Choosing either system constitutes a policy decision of the City Council. In making a determination, the City Council may wish to consider the benefits of each system, the resources necessary to operate, and the types of regulations to implement. Please note that the City may only charge fees to recover program costs from vendors if a permit system is in place.

Under a permit-based system, the City may issue permits for: a) stationary vending on sidewalks; b) general roaming on sidewalks; c) stationary vending in parks where no concessions agreement exists; and d) roaming in parks. Should the Council wish to continue to proceed with a permit-based system, the Council may consider issuing separate permits as follows:

Public Right of Way Permits

- Location-Based Permit –
This permit would secure a requested location for a one-year term with restrictions only based on health, safety, and welfare.

- Roaming Permit –
State law provides that the City may not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is related to objective health, safety or welfare concerns. However, if the intent is to provide a safe vending environment and avoid overconcentration of roaming vendors, the City may request a route plan for the issuance of a permit.

Parks Permit

State law provides that the City may not prohibit stationary vending in parks unless such park has a concessions agreement. Los Angeles Municipal Code Section (LAMC) 63.44 (B)(3) currently prohibits vending in parks. To comply with State law, the City Council may wish to request the City Attorney to amend the LAMC accordingly.

- The City may issue permits to individuals requesting a specified location within parks that do not have a concessions agreement.

- The City may issue permits to individuals seeking to roam within a park, regardless of concessions present in the park.

The LA Street Vendor Campaign has indicated that a permit program that allows vendors to choose a location would be favored inasmuch as it would provide an organized system that would protect vendors from extortion, reduced potential conflict among vendors, and hold vendors accountable for their vending locations. In a letter addressed to the City Council, dated October 10, 2018, the LA Street Vendor Campaign states that “many vendors are fearful that without a mechanism to allocate certain prime location to a single permit-holder, there may be greater risk of conflict between vendors, extortion, intentional obstruction of public space to exclude vendors and unsafe overconcentration.” The letter further states that “offering the option of a Fixed Location ... gives vendors a choice to pursue an assigned location or not – it does not require a sidewalk vendor to operate in an assigned location.”

Adopting Rules and Regulations under a Regulatory Vending System may be a less expensive option for the Council and will be in compliance with State law. Under this model, the duties and responsibilities of the Service Provider previously contemplated by Council could be reduced to only education. There would not be a need to manage a sidewalk vending permit program.

OPTIONS FOR COUNCIL CONSIDERATION

On September 17, 2018, SB 946 was signed into law to allow vending on sidewalks and parks. The law provides flexibility to local jurisdictions to either adopt rules and regulations consistent with State law, or establish a permit-based system. Inasmuch as the Council already opted to establish a permit-based program, it is recommended that the Council continue to proceed with implementation of a permit-based process. However, should the Council wish to consider other possible actions, in light of State law, below is a list of options that the Council may consider in making its determination.

I. Permit-Based System

If the Council wishes to continue to proceed with a permit-based system as previously adopted, it is recommended that the Council reaffirm its action of April 17, 2018, which requested the City Attorney to prepare a draft ordinance for the establishment of a sidewalk vending program and authorized BSS to issue sidewalk vending permits for the sale of food, goods and merchandise.

The Council should also request the City Attorney to revise the draft sidewalk vending ordinance transmitted June 2, 2018 for consistency with State law, and instruct BSS to review SB 946 and submit revised Rules and Regulations for Council approval prior by November 15, 2018, for compliance.

As part of the action of April 17, 2018, the Council instructed the CLA to report with a scope of work for a service provider to operate/manage the proposed sidewalk vending program overseen by BSS. It is recommended that if the City Council wishes to proceed with a permit-based vending program, staff should be instructed to redraft the scope of work in compliance with State law and authorized to prepare and issue a Request for Proposal.

Inasmuch as SB 946 also addresses vending in parks, the Council may wish to request the Board of Recreation and Parks to prepare and submit Rules and Regulations for vending in parks for Council approval. It is further recommended that the Council request the City Attorney to prepare a draft ordinance amending LAMC Section 63.44 and request the Board of Recreation and Parks to prepare Rules and Regulations for vending in parks, and submit for Council approval, in compliance with State law.

II. Regulatory Vending System

If the Council wishes to proceed with a regulatory system, the Council should request the City Attorney to revise the draft sidewalk vending ordinance transmitted June 2, 2018 for consistency with State law, and instruct BSS to review SB 946 and submit revised Rules and Regulations for Council approval by November 15, 2018, for compliance. The Council may wish to request the Board of Recreation and Parks to prepare and submit Rules and Regulations for vending in parks for Council approval.

III. Status Quo – No Vending Program

If the Council does not wish to establish a vending program of any kind, State law will be the sole governing authority over vending on sidewalks and in parks. The City would be able to enforce in accordance with State law as it relates to the sale of illegal items, blocking the sidewalk, or for violation of any other laws.

Monitoring and Compliance

In response to Council action of April 17, 2018, the City Attorney transmitted a draft ordinance which included a two-tiered penalty structure for permitted and unpermitted vendors. Below is a table comparing the City's adopted penalty structure and the State's penalty structure:

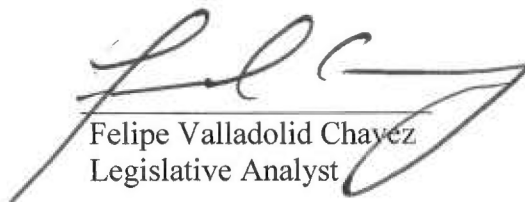
Penalty Structures

	<u>City of Los Angeles</u>	<u>State Penalty Structure</u>
Permitted	\$100 for first violation \$150 for second violation \$200 for third violation Revocation for four violation	\$100 for first violation \$200 for second violation \$500 for third violation
Unpermitted	\$250 for first violation \$500 for second violation \$1,000 for third violation	\$250 for first violation \$500 for second violation \$1,000 for third violation

According to State law, a violation occurring after 12 consecutive months with no violation shall be considered a first violation. Further, upon proof of permit, the fines to unpermitted vendors would be reduced to the level of the permitted vendors (Consistent with City's proposed program).

State law provides that the City may rescind a permit issued to a vendor upon the fourth violation or subsequent violations (Consistent with City's proposed program). State law further provides options for cities to allow community service in lieu of payment, waive the administrative fine or offer an alternative.

These are policy decisions for the City Council. It is recommended that the City Attorney be requested to make any amendments as desired by Council.


Felipe Valladolid Chavez
Legislative Analyst

- Attachments: 1) Motion (Price-Huizar; C.F. 13-1493-S4)
2) SB 946 (Lara)
3) Motion (Price-Huizar; C.F. 13-1493-S5)

ECONOMIC DEVELOPMENT

MOTION

In 2013, the Los Angeles City Council initiated the process to create a program to legalize sidewalk vending. Since then, the City Council has held numerous public hearings on the matter, and voted to decriminalize the act of vending on City sidewalks. The Council approved a policy framework, including permit requirements, rules, and regulations; and requested the City Attorney to prepare a draft ordinance. The draft ordinance is currently pending before Council.

On January 29, 2018, Senator Ricardo Lara introduced the Safe Sidewalk Vending Act (SB 946) which seeks to decriminalize vending in California and provides rules that local jurisdictions would have to follow when crafting local sidewalk vending policies. It is anticipated that passage of SB 946 would impact the rules and regulations of the sidewalk vending program that the City is now crafting.

Given the City's progress in terms of community engagement with all associated parties, the partnerships built with County health officials, and the work of City departments in the development of the City of Los Angeles Sidewalk Vending Program, it is imperative that the Council understand the potential impact of SB 946 on the City of Los Angeles.

I THEREFORE MOVE that the City Council instruct the Office of the Chief Legislative Analyst, with assistance of City Attorney and any other departments as necessary, to analyze Senate Bill 946 (Lara) and report on its impact to the City's draft Sidewalk Vending Program.

PRESENTED BY: 
CURREN D. PRICE, JR.
Councilmember, 9th District

SECONDED BY: 

ORIGINAL

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AUG 01 2018



Senate Bill No. 946

CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk

vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.

(2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.

(3) Sidewalk vending contributes to a safe and dynamic public space.

(4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.

(5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

(6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

SEC. 2. Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.2. SIDEWALK VENDORS

51036. For purposes of this chapter, the following definitions apply:

(a) "Sidewalk vendor" means 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.

(b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(c) “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

(d) “Local authority” means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority’s sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(4) (A) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority,

unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, 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, including, but not limited to, any of the following:

(1) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.

(4) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the sidewalk vendor.

(B) A description of the merchandise offered for sale or exchange.

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.

(E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

(d) Notwithstanding subdivision (b), a local authority may do both of the following:

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "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. A “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 article.

(2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority’s temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

51039. (a) (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.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority 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.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.

ECONOMIC DEVELOPMENT**MOTION**

On April 17, 2018, the Los Angeles City Council adopted rules and regulations for the establishment of a Sidewalk Vending Program (C.F. 13-1493). To further strengthen its intent, the City Council requested the City Attorney to prepare a draft ordinance with the goal of establishing a permit process by January 1, 2019. This was the culmination of a robust Citywide community engagement process which took into account the insight of community stakeholders such as sidewalk vendors, community advocates, business owners, business associations and health and public safety experts. These health and safety regulations included compliance with the American Disabilities Act (ADA), the California Food Retail Code and mechanisms to address concerns related to traffic and pedestrian congestion. The City Attorney transmitted a proposed ordinance on July 2, 2018 (C.F. 13-1493).

The City of Los Angeles embraces sidewalk vending through a regulated program that will enrich the City's streetscape by creating a vibrant marketplace, encourage entrepreneurship, and provide economic opportunity for families.

On September 17, 2018, Governor Brown signed Senate Bill 946 (Lara) which allows sidewalk vending to occur and establishes guidelines and requirements for cities who wish to regulate vendors. The bill also authorizes cities to develop additional regulations for sidewalks and parks based on health, safety and welfare concerns. Lastly, the bill becomes effective on January 1, 2019 and the City will need to have an adopted program prior to this date in order to enforce local regulations on vending on any sidewalks and in any parks.

To ensure that the City's program is aligned with SB 946 and reflects the intent of the Council, it is imperative that City staff be requested to review the provisions of the bill, prepare a new ordinance and develop revised rules and regulations consistent with State law.

I THEREFORE MOVE that the City Council request the City Attorney, with the assistance of the CLA, to:

- 1) Draft a new Sidewalk Vending Ordinance consistent with SB 946, including provisions related to parks.
- 2) Revise the draft ordinance to remove sections related to rules and regulations (these will be part of a separate document to be submitted by the Bureau of Street Services and approved by Council), including but not limited to:
 - a. Section 42.13 C – Duties and Responsibilities of the Vending Service Provider
 - b. Section 42.13 E – Vending Licenses and Permits
 - c. Section 42.13 F – Additional Operating Requirements
 - d. Section 42.13 G – Placement of Stationary or Mobile Carts
 - e. Section 42.13 I – Other Provisions
- 3) Include any other necessary revisions to current provisions of the Administrative Code and/or Municipal Code to ensure consistency with State law.
- 4) Present the revised Sidewalk Vending Ordinance to the Economic Development Committee on October 9, 2018, or as scheduled by the Chair of the Economic Development Committee.

I FURTHER MOVE that the City Council instruct the Board of Public Works, Bureau of Street Services, with the assistance of the CLA and any other necessary department, to review SB 946 and submit to Council for approval, revised Rules and Regulations consistent with the intent of the Council and in compliance with State law.

PRESENTED BY

CURREN D. PRICE

Councilmember, 9th District

SECONDED BY

SEP 25 2018

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