

March 8, 2018

Honorable Members of the City Council  
Los Angeles City Hall  
200 N. Spring Street  
Los Angeles, CA 90012

*Delivered via electronic mail*

**Re: Sidewalk Vending Policy – CF 13-1493**

Dear Honorable Members,

We, the undersigned legal organizations and professionals, write to express our serious legal concerns regarding one extremely troubling element of the current proposal for a Sidewalk Vending Program.

The November 8, 2017 Report from the Economic Development and Public Works and Gang Reduction Committees recommends that the Council “*request the City Attorney, in conjunction with the CLA, CAO, and EWDD, to establish a process by which property owners can affirmatively opt out or disallow street vending on sidewalks fronting their property.*” If adopted, this provision (hereinafter referred to as the “Property Owner Veto”) would allow certain brick and mortar businesses to prevent (veto) the issuance of licenses to other businesses in the vicinity.

Some property owners have claimed that because the property line may extend to the midpoint of the street or because they financially contribute to sidewalk repairs, they should have the unfettered ability to control what occurs on those sidewalks in front of their properties. This argument is without merit and flies in the face of the well-established duty of municipalities to regulate the public sidewalks for all.

For the reasons described below, the proposed Property Owner Veto raises grave legal and constitutional concerns and must not be included in the City’s Sidewalk Vending Program.

- 1. The Property Owner Veto is an impermissible delegation of authority.** The California Constitution clearly states, “The Legislature may not delegate to a private person or body power to ... perform municipal functions.” Cal. Constit. Art. XI, Sect. 11. The City’s attempt to hand private property owners the unfettered power to block otherwise legal street vending is an impermissible delegation of municipal authority. The California Supreme Court has elaborated on this constitutional principle of non-delegation, stating, “[w]hen the power which the Legislature purports to confer is the power to regulate the business of one’s competitors ... or the power to exclude potential competitors from an entire industry or occupation ... a real danger of abuse arises.” *Wilke & Holzheiser, Inc. v. Dep’t of Alcoholic Beverage Control*, 65 Cal. 2d 349, 367 (1966). And while administrative and ministerial functions may be delegated, those exercises of delegated power must be guided by standards to ensure any action taken will not be left to a third

party's uncontrolled discretion. *See Schechter v. County of Los Angeles*, 258 Cal. App. 2d 391, 396-97 (1968). Here, the proposed Property Owner Veto would improperly delegate to property owners the authority to disallow a vending permit, without providing any standards to guide the decision.

- 2. Economic protectionism is not a legitimate government interest.** Regulations like the Property Owner Veto, which simply protect a discrete group from economic competition, do not advance a legitimate government interest and are prohibited under the 14<sup>th</sup> Amendment. *See, e.g., Merrifield v. Lockyer*, 547 F.3d 978, 991 (9th Cir. 2008). In fact, a similar LA City ordinance has already been struck down on these grounds. The Court of Appeal invalidated an LA ordinance that prohibited catering trucks from selling within 100 feet of the entrance to a “stationary or fixed” restaurant, cafeteria, or lunch counter. The Court found no rational basis for the regulation and determined that the City’s proffered justifications were simply pretext for an unconstitutional “naked restraint on trade.” *See People v. Ala Carte Catering Co.*, 98 Cal. App. 3d Supp. 1, 4 (1979). Here, by giving private property owners the unfettered ability to disallow another business from operating in the vicinity, the proposed Property Owner Veto would be an even more egregious “naked restraint on trade,” and would fail to advance any legitimate government interest.
- 3. The Property Owner Veto will result in arbitrary treatment of street vendors.** The proposed Property Owner Veto could create a situation in which one vendor may receive a permit to operate on one end of a block, but a similarly situated vendor may not operate on the opposite side of the block, based purely on the arbitrary whim of a third party private business interest. Moreover, the City does not subject similarly situated businesses – such as food trucks or other brick and mortar establishments – to a Property Owner Veto. Such arbitrary distinctions bear no rational relationship to any legitimate government interest. *See, e.g., Merrifield v. Lockyer*, 547 F.3d 978, 991 (9th Cir. 2008); *Craigsmiles v. Giles*, 312 F.3d 220, 228 (6th Cir. 2002); *Allied Concrete & Supply Co. v. Brown*, 2017 U.S. Dist. LEXIS 116130, at \*14 (C.D. Cal. Mar. 6, 2017).
- 4. Private property owners – and even the City – may face liability for acts of discrimination, extortion, or harassment.** The Property Owner Veto will make the City and property owners vulnerable to liability on multiple fronts. Property owners could face liability for extortion or harassment if they demand monetary payment or attempt to place additional restrictions on vendors, such as a limit on operating hours, in exchange for their consent on a permit application. A private property owner could also face liability under civil rights laws if a property owner commits these acts in whole or part because of a vendor’s nationality, race, ethnicity, or religion. Furthermore, the City may be liable for discrimination if the Property Owner Veto has a disparate impact on minority vendors. Both the City and private business owners will be forced to divert valuable resources to defend illegal actions arising out of the Property Owner Veto if it is include in the Sidewalk Vending Program.

After decades of unjust criminalization, the City Council is finally poised to legalize sidewalk vending. This is an opportunity to craft a thoughtful, effective policy that creates opportunities for low-income vendors to formalize their business and work without fear, while promoting safety and accessibility in our public space. Unfortunately, the Property Owner Veto raises very serious legal questions and now threatens to undermine the entire program. For all of the reasons outlined above, we respectfully urge the City Council to strike this provision from the proposed Sidewalk Vending Program.

Sincerely,

ACLU of Southern California  
American Constitution Society for Law & Policy – Los Angeles Chapter Executive Board  
Bet Tzedek Legal Services  
CARECEN  
Carol Sobel  
National Immigration Law Center  
National Lawyers Guild – Los Angeles  
Public Counsel  
UCLA Criminal Defense Clinic  
UCLA Labor Center

CC: Mike Feuer, City Attorney