

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: February 6, 2020

TO: Honorable Members of the Rules, Elections and
Intergovernmental Relations Committee

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

Council File No: 19-0002-S191
Assignment No: 20-01-0049

SUBJECT: Resolution relative to amending state law for greater flexibility of enforcement of non-permitted vending violations.

CLA RECOMMENDATION: Adopt the attached Resolution to include in the City's 2019-2020 State Legislative Program, SUPPORT and/or SPONSORSHIP of legislation and/or administrative action to amend California Government Code Section 51039 to allow local municipalities with compliant sidewalk vending permit programs more flexibility when enforcing non-permitted vending violations.

SUMMARY

On December 4, 2019, a Resolution (Lee-Krekorian) was introduced to support or sponsor legislation to allow local municipalities with compliant sidewalk vending programs more flexibility when enforcing non-permitted vending violations.

The Resolution states that effective January 1, 2019, California Senate Bill 946 (SB 946) (Lara) established the following restrictions for jurisdictions with adopted sidewalk vending programs:

- Prohibits local jurisdictions from establishing rules and regulations that require sidewalk vendors to operate within specific parts of the public right-of-way, unless it is directly related to objective health, safety, or welfare concerns;
- Allows local jurisdictions to adopt additional requirements regulating the time, place, and manner of sidewalk vending if such requirements are directly related to objective health, safety, or welfare concerns;
- Authorizes local jurisdictions to prohibit sidewalk vending near permitted certified farmers' markets or swap meets, and near areas designated for a temporary special permit issued by the local authority; and,
- Provides that enforcement of sidewalk vending violations are restricted to administrative fines.

The Resolution further provides that in 2018, the City Council adopted rules and regulations in compliance with State law and is currently in the process of establishing a permit-based system. The Resolution notes that given that State law restricts municipalities to administrative fines, appropriate enforcement tools are necessary to effectively encourage compliance. The Resolution therefore recommends that the State Government Code be amended to allow the issuance of infraction citations to non-permitted vendors to allow municipalities to more effectively regulate and protect the safety our permitted vendors, families and visitors.

BACKGROUND

On February 15, 2017, the City Council adopted two ordinances amending Los Angeles Municipal Code Section 42.00(b) to limit enforcement of violations for street vending to issuance of citations under the Administrative Citation Enforcement (ACE) Program¹ and amending LAMC Section 11.00 to remove the potential to use a criminal remedy against a person who fails to pay an administrative citation. Additionally, with the establishment of the ACE Program, violations of LAMC 63.44 (all subsections affecting Park and Recreation areas) were limited to administrative enforcement. We note that with the establishment of the City's Sidewalk and Park Vending Program, LAMC Section 42.00 was removed and a new section, LAMC Section 42.13, was added.

Vending violations under the ACE Program are subject to the following penalties: \$100 for the first violation, \$150 for the second violation and \$200 for a third violation. The penalties for vending without a license or permit are: \$250 for the first violation, \$500 for the second violation, and \$1,000 for a third and subsequent violation. The administrative fines for the non-permitted vendors may be reduced upon submission of proof of license and/or permit. Per state law, and as adopted by the ordinance, additional fees, assessments, or any other financial conditions beyond those authorized by the ordinance, shall not be assessed.

In September 2018, Governor Brown signed SB 946 which established Statewide governance of vending in the public right-of-way and in parks. State law provides a two-tiered penalty structure for permitted and unpermitted vendors which includes the following 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 a fine, or offer alternative forms of paying a fine.
- A violation occurring after 12 consecutive months with no violation shall be considered a first violation.

State law also requires local jurisdictions to offer an "Ability-To-Pay" Determination to individuals who are issued a violation. Individuals who meet specified income thresholds would only be responsible for 20 percent of the penalty.

Bureau of Street Services

The Bureau of Street Services (BSS) has expressed concerns that State law does not provide City officers the authority to move non-compliant vendor from location after warnings or citations. The incentive to obtain a permit and comply with rules and regulations is minimal and does not compel violators to follow the rules. BSS further states that the current system unfairly burdens compliant vendors who obtain permits and comply with regulations while non-compliant unpermitted competitors take away limited space on sidewalks with little penalty for non-compliance.

Amending the State Government Code to provide local jurisdictions with the authority and flexibility to enforce rules and regulations against violators outside of administrative citations would result in more efficient coordination and an enhanced ability to protect vendors, families, and visitors. It is therefore recommended that the City Council adopt the attached Resolution.

Felipe Valladolid Chavez
Legislative Analyst

SMT:fv

Attachment: Resolution (Lee-Krekorian)

¹ Ordinance No. 184765 and No. 184766

RESOLUTION

RULES, ELECTIONS, INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, on January 1, 2019, California Senate Bill (SB) 946 (Lara) became effective establishing broad guidelines for local jurisdictions that choose to adopt a sidewalk vending program, including the following provisions:

- Prohibits local jurisdictions from establishing rules and regulations that require sidewalk vendors to operate within specific parts of the public right-of-way, unless it is directly related to objective health, safety, or welfare concerns; and
- Allows local jurisdictions to adopt additional requirements regulating the time, place, and manner of sidewalk vending if such requirements are directly related to objective health, safety, or welfare concerns; and
- Authorizes local jurisdictions to prohibit sidewalk vending near permitted certified farmers' markets or swap meets, and near areas designated for a temporary special permit issued by the local authority; and
- Provides that enforcement of sidewalk vending violations are restricted to administrative fines; and

WHEREAS, in 2018, the City Council adopted rules and regulations in compliance with State law and is currently in the process of establishing a permit-based system; and

WHEREAS, given that State law restricts municipalities to administrative fines, municipalities find themselves without the proper enforcement tools to effectively encourage compliance; and

WHEREAS, the Government Code should be amended to allow municipalities more flexibility in order to effectively regulate and protect our permitted vendors, families, and visitors;

NOW, THEREFORE BE IT RESOLVED, that the City of Los Angeles include in the 2019-2020 State Legislative Program SUPPORT or SPONSORSHIP of legislation and/or administrative action to amend California Government Code Section 51039 to allow local municipalities with compliant sidewalk vending permit programs more flexibility when enforcing non-permitted vending violations.



DEC 04 2019

PRESENTED BY: 
JOHN S. LEE
Councilmember, 12th District

SECONDED BY: 

ORIGINAL