

Public Comment

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California Senate Bill No. 946
Senate Committee on Governance and Finance
Analysis

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SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
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SIDEWALK VENDORS

Establishes requirements for local regulation of sidewalk vendors.

Background

Police power of cities and counties. The California Constitution allows a city or county to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws, known as the police power of cities." It is from this fundamental power that local governments derive their authority to regulate land uses through planning, zoning ordinances, and use permits. Local agencies also use this police power to abate nuisances and protect public health, safety and welfare.

As an extension of the police power, state law lets local governments require businesses operating in their jurisdictions to obtain a license and impose related licensing fees. Local governments license businesses for lots of reasons: to identify individuals operating businesses in their jurisdictions, to ensure compliance with other local laws, to facilitate contact in case a problem arises, and to raise money to support public services that support those businesses.

Cities and counties subject businesses to a wide variety of regulations to preserve the public health and welfare, such as limitations on their hours of operation, restrictions on where various types of businesses can be located within a jurisdiction, and regulations on the type of merchandise that can be sold. These regulations are typically intended to address concerns of local citizens about the impact of a business.

City ordinances regulate sidewalk vendors. Sidewalk vendors are individuals that sell goods on streets and sidewalks from carts and other non-motorized conveyances. These vendors engage in business in many cities throughout the state, where they sell food items and other merchandise. Some sidewalk vendors are stationary, while others rove from one location to another. Although there is no statewide count, there are an estimated 50,000 sidewalk vendors in the City of Los Angeles.

Cities and counties throughout the state have ordinances regulating or banning sidewalk vending. These ordinances impose varying regulations on sidewalk vendors, including to:

- Restrict where sidewalk vendors may operate to certain zones or parts of the city;
- Preclude sidewalk vendors from operating in or near certain locations, such as schools, parks, sports arenas, or restaurants;
- Limit the hours a sidewalk vendor may operate;

- Impose fines and jail time for violations of sidewalk vending ordinances;
- Require permission from nearby business owners;
- Limit the total number of sidewalk vendor permits issued in the local jurisdiction or within a single block at any given time; and
- Prohibitions on stationary vending.

Discussions are ongoing at the local level on how to fairly regulate sidewalk vendors. In early 2017, the City of Los Angeles enacted an ordinance that decriminalized street vending, subjecting vendors only to administrative citations for violations. However, the ordinance did not establish a full regulatory framework: the Los Angeles City Council is currently debating whether certain neighborhoods should be off-limits to sidewalk vendors, whether limits of two street vendors per block is reasonable, and whether sidewalk vendors must receive the permission of nearby brick-and-mortar businesses, among other issues.

CalCode. Businesses that sell food are regulated under the California Retail Food Code (CalCode). CalCode lays out the requirements that food retailers must meet, including operational practices, equipment standards, and standards for facilities, such as kitchens and restrooms. County offices of environmental health—and the environmental health departments in four cities—regulate retail food operations. CalCode differentiates among permanent food facilities, mobile food facilities, temporary food facilities, cottage food operations, and other types of food retail, and has differing rules for each.

Criminal convictions and immigration status. On January 25, 2017, President Trump issued Executive Order 13767 revising the United States Immigration and Customs Enforcement (ICE) “criminal alien policy,” which establishes rules under which unauthorized immigrants are potentially removable because they have been convicted of a crime. This revision significantly broadened the number of immigrants who would be considered a priority for deportation. The executive order prioritizes deportation of individuals who have committed acts that *could have been charged* as a crime, regardless of whether their actual conviction was criminal. It also prioritizes for deportation an individual who has been charged with a criminal act, but for whom the charge has not been resolved.

Because many cities and counties make violation of their sidewalk vending ordinances a criminal offense, such as a misdemeanor or infraction, sidewalk vendors have been subject to deportation. For example, in October 2017, ICE detained a sidewalk vendor in the City of Rancho Cucamonga after the vendor had been cited for a fourth violation of Rancho Cucamonga’s municipal codes, which is a misdemeanor.

The author wants to allow sidewalk vendors to operate freely in local jurisdictions throughout the state and to decriminalize violations issued for local sidewalk vending policies.

Proposed Law

Senate Bill 946 establishes requirements for local regulation of sidewalk vendors, defined as a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path. SB 946 also specifies a schedule of fines and modifies the penalties that apply to current and past violations of sidewalk vending ordinances. The bill includes findings and declarations to support its purposes.

I. Local regulation of sidewalk vendors. SB 946 allows a local authority—defined as a city, charter city, county, or city and county—to adopt a program to regulate sidewalk vendors in compliance with the bill, and prohibits a local authority from regulating sidewalk vendors except as provided in the bill. A local government that has a sidewalk vending regulatory program that substantially complies with the requirements of the bill is not required to adopt a new program.

A local authority cannot:

- Require a sidewalk vendor to operate within specific parts of the public right-of-way, except where that restriction is directly related to objective health, safety, or welfare concerns. SB 946 specifies that perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.
- Prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority. However, a local authority may prohibit stationary sidewalk vendors—defined as vendors that vend from a single location—from vending in a 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.
- 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.
- Restrict sidewalk vendors to operate only in a designated neighborhood or area, except where that restriction is directly related to objective health, safety, or welfare concerns. However, a local authority may prohibit stationary sidewalk vendors in areas where commercial uses are not a permitted use, but shall not prohibit roaming sidewalk vendors, who stop moving only to complete a sale.
- Restrict the overall number of sidewalk vendors, unless the restriction is directly related to objective health, safety, or welfare concerns.

SB 946 allows a local authority to adopt additional requirements regulating the time and manner of sidewalk vending, including, but not limited to, any of the following:

- Limiting the 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.
- Requiring the sanitary conditions to be maintained.
- Requiring the sidewalk vendor to possess a valid business license, provided that the local authority issuing the 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 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 licensure program or comply with a state law or state or federal court order.
- Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.
- Requiring additional licenses from other state or local agencies to the extent required by law.
- Requiring compliance with other generally applicable laws.

SB 946 allows a local authority to require a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

- The name and address of the sidewalk vendor.
- A description of the merchandise offered for sale or exchange.
- A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.
- The California seller's permit number, if any, of the sidewalk vendor.
- The name and business address of the principal if the sidewalk vendor is an agent of an individual, company, partnership, or corporation.

SB 946 also provides that nothing in the bill affects the applicability of CalCode to sidewalk vendors who sell food.

II. Fine provisions. SB 946 prohibits a local authority that has not adopted a compliant program from citing or penalizing a sidewalk vendor for any regulation that doesn't meet the requirements of the bill. In jurisdictions that have adopted a compliant program, SB 946 prohibits a person from violating the requirements of the program, and specifies that a violation of the program is only punishable by an administrative fine of:

- \$100 for a first violation;
- \$200 for a second violation within one year of the first violation; and
- \$500 for each additional violation within one year of the first violation.

SB 946 requires an adjudicator of these fines to take into account the ability of the violator to pay the fine and allows a violator to request an ability to pay determination at any point, including during adjudication or after the fines remain unpaid and go to collection or become delinquent. SB 946 requires a local authority to:

- Provide notice to the violator that he or she has the right to request an ability to pay determination and make instructions available for doing so; and
- Accept payment of 20 percent of the fine in full satisfaction if the violator earns less than 125 percent of the federal poverty line or receives certain means-tested government benefits.

SB 946 says that no additional financial penalties may be imposed, but a local authority may also rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations. SB 946 allows a local authority to offer community service in lieu of paying the fine, to waive the fine, or to offer alternative dispositions. Any fines collected stay with the city or county.

III. Decriminalization. SB 946 specifies that penalties for violations of a compliant sidewalk vendor program, or any regulations on sidewalk vendors adopted before January 1, 2019, cannot be infractions or misdemeanors, and sidewalk vendors cannot be subject to arrest except where permitted under law. In addition, a sidewalk vendor may not be penalized with an infraction or misdemeanor if the vendor does not pay the administrative fines authorized by the bill.

SB 946 applies these provisions retroactively to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors and dismisses any criminal prosecutions that have not reached final judgment. The bill also allows a person convicted of a misdemeanor or infraction for sidewalk vending to petition for dismissal of their sentence, fine, or conviction if he or she would not have been convicted of that offense if SB 946 had been in effect. The court must presume that the petitioner is eligible for dismissal, and must dismiss and seal the conviction as legally invalid, unless the local authority proves otherwise by clear and convincing evidence. No hearing is necessary for such a petition unless the petitioner requests one.

SB 946 provides that:

- 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;
- These provisions do not diminish or abrogate any rights or remedies otherwise available to the petitioner; and
- The bill does not diminish or abrogate the finality of judgments in any case not falling under the purview of the bill.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. Sidewalk vendors are a fixture in California's communities and a part of vibrant food cultures. But outdated laws expose these entrepreneurs to harassment, criminal prosecution, and even deportation. Many sidewalk vendors are undocumented immigrants, and sidewalk vending offers a way for those immigrants to be self-sufficient and improve their economic situation. But local governments throughout the state have overly restrictive ordinances that close off this opportunity to many vendors. In addition, the Trump administration's recent change to immigration enforcement means that a minor violation of a local ordinance can result in severe consequences. SB 946 directly addresses these problems by establishing parameters for local regulation of sidewalk vendors to ensure that local governments can't directly or indirectly ban sidewalk vending. It allows for regulations based on objective health, safety, and welfare concerns, and doesn't change how retail food sales are treated under the law. Local governments that already meet the bill's requirements don't have to adopt new rules, and they can still require business licenses and other necessary permits. SB 946 also protects the most vulnerable sidewalk vendors from deportation by allowing local governments to levy administrative citations and fines, but not criminal penalties that can be used against them by a hostile federal government. With this bill, sidewalk vendors can continue to support themselves and their families and continue to help build vibrant local economies.

2. Finding a balance. The California Constitution vests local governments with the authority to make decisions about the types of businesses that may operate within their jurisdiction, and the rules they must follow. These regulations further governmental interests, including excluding commercial activity from residential areas, ensuring free movement along sidewalks, reducing the sale of counterfeit or illegal merchandise, preventing crime, or discouraging minors from buying unhealthy products. Since different communities emphasize different priorities, it makes

sense to allow local governments to decide what rules best apply. Local governments, including the City of Los Angeles, have already taken steps to decriminalize sidewalk vending, and those governments continue to debate and refine the rules that sidewalk vendors must follow. SB 946 overrules those local deliberations by dramatically narrowing the scope of regulations that local governments may apply to sidewalk vendors. In an effort to account for every potential misuse of local regulatory authority, SB 946 potentially excludes many legitimate interests from consideration by local communities. For example, SB 946 may prevent local governments from prohibiting the vending of unhealthy foods near schools. Overriding individual local ordinances through a statewide bill—instead of addressing specific concerns within each municipality—represents a significant state intrusion into local affairs.

3. Crime and punishment. Sidewalk vendors can run afoul of local laws for a number of reasons: language barriers, inability to pay permit fees or previous fines, or accidental violations due to complicated or restrictive local laws. Decriminalization of sidewalk vending in these cases is an appropriate response to ensure that the punishment fits the crime—and many local governments have taken steps to do so already. In other cases, such as for repeat offenders who have already been provided multiple notices in their primary language, stronger penalties may be warranted to encourage compliance and to deter bad actors from simply disregarding lesser penalties. SB 946 blocks local governments from enforcing any punishments other than the specified schedule of fines and requires them to accept only a fraction of the face value of the fine as full payment on showing of an economic hardship. This means local governments can't seize property or use other stronger means in those limited cases where it's warranted. If local governments can't impose harsher punishments, and recalcitrant sidewalk vendors can ignore fines without fear that penalties will escalate, will local governments be able to enforce even the limited rules that the bill allows them to establish?

4. Parks and recreation. Local parks are an important gathering-place for families who want to enjoy nature. Oftentimes, an integral part of the experience is the respite from the urban environment. SB 946 prohibits local ordinances that bar sidewalk vendors from hawking their wares in parks, and only allows local governments to place limitations on vendors in parks if those vendors are stationary and the park has an exclusive contract with a concessionaire. These restrictions create an uneven playing field that disadvantages the contracted vendors who go through a permitting process to operate in the park, undermining a long history of successful partnerships between public agencies and private sector concessionaires. SB 946 also allows sidewalk vendors to intrude on the natural environment, raising environmental protection concerns and disrupting park-goers' experiences. SB 946 creates additional challenges for local parks, potentially decreases attendance, and gives free rein to vendors at the expense of the park-going public.

5. Special treatment. Local brick and mortar enterprises have spent years establishing their businesses based on a set of assumptions and rules, such as where they can be located, the taxes they have to pay, and the best way to attract customers. Under the Property and Business Improvement Act of 1994, many property owners voluntarily pay assessments to provide services that benefit all of the businesses that fall within a certain district. While brick-and-mortar stores have to pay these assessments, sidewalk vendors do not. SB 946 allows sidewalk vendors to set up shop virtually anywhere in a jurisdiction, including in a such an assessment district. These vendors benefit from the assessments but do not have to contribute. In addition, some sidewalk vendors sell similar types of goods as nearby businesses, but SB 946 sets up a set of much less stringent rules than those that brick-and-mortar stores must follow. For example, sidewalk vendors may sell second-hand goods, similar to flea markets and pawnbrokers, or food,

like existing restaurants—all of which must follow elaborate state and local permitting and land-use rules. Should the Legislature exempt sidewalk vendors from the types of regulations that other similar businesses have to follow?

6. Charter city. The California Constitution allows cities that adopt charters to control their own “municipal affairs.” In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn’t define “municipal affairs,” the courts determine whether a topic is a municipal affair or whether it’s an issue of statewide concern. SB 946 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes legislative findings and declarations that 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, as are disruptive business regulations and the appropriate flow of traffic and safety of pedestrians.

7. Technicals. The Committee may wish to consider the following technical amendments to correct inconsistencies in the bill:

- On page 3, line 17, strike “chartered city or chartered county” and insert “charter city”.
- On page 7, lines 23 and 24, strike “State Board of Equalization” and insert “California Department of Tax and Fee Administration”.

Support and Opposition (4/12/18)

Support: ACLU California; Bet Tzedek Legal Services; CA Labor Federation; Central American Resource Center (CARECEN); Centro Legal de la Raza; CLUE P♀WER (People Organizing for Women's Economic Rights); Courage Campaign; Dolores Mission; Investing in Place; Koreatown Immigrant Workers Alliance (KIWA); LA Forward; LA Walks; LApplus; Legal Aid at Work; Legal Services for Prisoners with Children; Los Angeles Community Action Network; Los Angeles Food Policy Council; Los Angeles Street Vendor Campaign; National Lawyers Guild – Los Angeles Chapter; Opportunity Fund; Pomona Economic Opportunity Center; Public Counsel; Restaurant Opportunities Center of Los Angeles (ROC-LA); Self Help Graphics & Art; UCLA Criminal Defense Clinic; UCLA Labor Center; Urban & Environmental Policy Institute, Occidental College; Venice Community Housing; Women Organizing Resources, Knowledge and Services (WORKS).

Opposition: California State Association of Counties; California Swap Meet Owners Association; Central City Association of Los Angeles; City of Beverly Hills; City of El Cajon; City of Placentia; City of Stanton; Downtown Center Business Improvement District; Los Angeles Area Chamber of Commerce; Urban Counties of California; Valley Industry and Commerce Association.

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