

City of Sacramento

Legislation Text

File #: 2019-01533, **Version:** 1

Title:

(Pass for Publication) Ordinance Adding Chapters 5.86 and 5.90 to and Amending Chapter 5.88 and Various Sections of Chapter 12.72 of the Sacramento City Code Relating to Mobile Service Vehicles, Outdoor Vending, and Sidewalk Vending

File ID: 2019-01533

Location: Citywide

Recommendation:

1) Review an Ordinance adding chapter 5.86; amending chapter 5.88; adding chapter 5.90; and amending sections 12.72.020, 12.72.060, and 12.72.070 of the Sacramento City Code relating to mobile service vehicles, outdoor vending, and sidewalk vending; 2) pass for publication the Ordinance title as required by Sacramento City Charter Section 32(c) for consideration on December 3, 2019.

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Presenter: None

Attachments:

- 1-Description/Analysis
- 2-Summary of Senate Bill 946
- 3-Senate Bill 946
- 4-Summary of Ordinance Changes
- 5-Ordinance (Redline)
- 6-Ordinance (Clean)

Description/Analysis

Issue Detail: On September 17, 2018, Governor Jerry Brown signed Senate Bill ("SB") 946 legalizing and decriminalizing the sale of food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person on the

public sidewalk or other pedestrian path, including within parks (“sidewalk vending”). Under SB 946, a local authority may adopt a program to regulate sidewalk vending provided it complies with SB 946, codified in Government Code section 51036 *et seq.*, and any additional regulation of sidewalk vending must directly relate to an objective health, safety, or welfare concern. Additionally, SB 946 creates two separate categories of sidewalk vending, namely, stationary and roaming vending. Persons who engage in stationary sidewalk vending may not operate from any other location than the one designated under the permit, except where otherwise allowed by the local authority. Persons who engage in roaming sidewalk vending may operate anywhere in the local authority’s jurisdiction but may only stop to complete a sale.

The law also permits sidewalk vending in public parks unless there is a concession agreement that exclusively permits the sale of food or merchandise by the concessionaire. SB 946 also allows park authorities to limit sidewalk vending in parks if the limitations are directly related to objective safety, health and welfare concern; necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities; or necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park. In addition, a local authority may prohibit all stationary sidewalk vending in the local authority’s parks where there is a signed agreement that exclusively permits the sale of food or merchandise by a specific concessionaire.

Lastly, SB 946 makes any violation of the proposed Ordinance punishable only by an administrative fine, as specified (see Attachment 2 for fine amounts). The new law also allows a local authority’s ability to suspend or revoke a permit only upon the fourth or subsequent violation within the same year. It also requires a local authority to take into consideration the individual’s ability-to-pay the fine, reducing the fine if the assessment warrants reduction. Attachment 2 provides a detailed summary of SB 946 and Attachment 3 is the bill in its entirety. Relevant portions from SB 946 include:

- Allows stationary and roaming vendors
- Allows vending of food and merchandise sales
- Allows for vending in public parks, except under certain conditions
- Prohibits a limitation on the overall number of permitted sidewalk vendors
- Allows for limiting hours of operation, only if not unduly restrictive
- Prohibits restrictions based on community animus or economic competition

Currently, Sacramento City Code chapter 5.88, among other things, restricts and prohibits selling food or merchandise on the public sidewalks, streets, alleys, and pedestrian access easements in the City (“vending”), except for designated places in the downtown area with a city-issued outdoor vending permit. In order to continue regulating these activities the City Code needs to be modified to be compliant with SB 946. Staff recommends Council establish an enforceable permit process that complies with SB 946 by adopting the attached Ordinance. Details on the Ordinance changes are

included in Attachment 4.

Based on direction from the Law and Legislation Committee, staff removed the requirement of a Department of Justice background check as part of the vendor application process. However, because vendors will be operating near schools, in parks, and in residential areas, the Committee did request an alternative criminal history check. The application process will include a local criminal history check: Sacramento Police Department will review local records using an applicant's name, date of birth, and driver's license number and check the State's sex offender registry database. If this initial check returns ambiguous or relevant criminal history, the applicant will have the option to voluntarily submit to a fingerprinting background check if they wish to continue the permitting process. The City currently submits fingerprinting results to the California Department of Justice and considers criminal history in the State of California but does not consider citizenship status or provide notification to federal agencies. The permitting process will contain no questions regarding any applicant's immigration status nor will staff respond to requests for information about an individual solely on the basis of alleged violations of federal immigration laws, as decreed in Resolution No. 2017-0158 (*Reaffirming the City of Sacramento's Status as a City of Sanctuary...*), Section 2. (5.)(7.).

Finally, the proposed Ordinance amends the City's current enforcement scheme of criminal and civil penalties to administrative penalties for fines in amounts from \$100 to \$500 for each violation within one year, the fourth or subsequent violations could result in revocation of the permit. It is important to note that the City's Code Enforcement Officers have long been challenged with enforcement of outdoor vending. Code Enforcement Officers are required to obtain identification prior to issuing citations and vendors frequently do not have identification or refuse to provide it. In addition, citations are frequently left unpaid. State designated reduced citation fees and the inability to seize materials raises further concerns about the effectiveness of enforcement. Requiring a permit will enable city staff to contact vendors if complaints arise and allows for the suspension or revocation of permits; however, most enforcement concerns revolve around unpermitted vendors. The proposed program requires the conspicuous display of city permits that will allow easy identification for Code Enforcement Officers and will allow consumers the opportunity to seek out only those vendors in compliance with city code. The County of Sacramento faces similar struggles with enforcing vending regulations and staff continues to work closely with them and other jurisdictions to explore new and innovative ways to combat unpermitted street vending.

Staff will continue outreach to the community regarding changing requirements. Since discussions around outdoor vending began, staff has worked closely with local business improvement associations and organizers to reach the vending and business communities. As the ordinance moves forward, staff will conduct outreach, including community meetings, to increase awareness and compliance with permit requirements, including partnering with the County of Sacramento Environmental Health to educate food vendors about health permit requirements.

Policy Considerations: Currently, there are ten permitted vendors in the Central Business District

as permitted under City Code chapter 5.88. The City has a list of over 100 people interested in vending in this limited area and the Business Permits office receives calls on a weekly basis from people interested in obtaining a permit to vend food throughout the city. Under SB 946, vendors have begun to operate with only a Business Operations Tax Certificate required by the City.

Chapter 5.88 addressed all types of outdoor vending and created exceptions for certain outdoor vending activities including cart outdoor vendors and mobile service vehicles. To preserve and clarify the different activities regulated under chapter 5.88, the proposed Ordinance adds chapter 5.86 to continue the existing regulation of mobile service vehicles, adds chapter 5.90 to separate a permitting program for sidewalk vendors (formerly known as outdoor vendors), and retains the remaining regulations for outdoor vending which includes brick-n-mortars selling food or merchandise from displays, carts, or stands immediately outside of its physical establishment.

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (CEQA): This action is not a “project” subject to CEQA because it involves administrative matters and will not result in new physical development, direct changes to the physical environment, and any reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines § 15378(b)(5).)

Sustainability: Not Applicable.

Commission/Committee Action: Staff presented outdoor vending research findings and program options to the Law and Legislation Committee on June 26, 2018. The Law and Legislation Committee directed staff to return with an outdoor vending pilot program. However, while drafting the pilot program, the State of California passed SB 946. As a result, staff’s recommendations were adjusted significantly, and the current proposal was presented to the Law and Legislation Committee on July 23, 2019. The Law and Legislation Committee forwarded the proposed ordinance to Council under condition that staff was able to find a solution to conduct a criminal background check on vendors without fingerprinting and submitting data to the California Department of Justice to avoid deterring potential permit applicants due to insecurity around immigration status. In addition, the Committee directed staff to make the following changes prior to presenting to Council: allowing for the use of electric bicycles, specific restrictions regarding operations around outdoor markets (e.g., Certified Farmers’ Markets), and elimination of the language “The verifications by declaration under the penalty of perjury..” with regards to appeal statements.

Staff provided information regarding the changes to the Parks and Recreation Commission on November 7, 2019.

Rationale for Recommendation: Sidewalk vendors are vibrant additions to the community, providing innovative, economical business opportunities and expanded options for consumers. Under state law, these vendors can operate, but may be subject to a permitting process by the City. In order to require a permit and enforce regulations, the City must adopt an ordinance aligned with SB 946. Requiring vendors to go through a permitting process and requiring compliance with basic regulations will help ensure the health and safety of the community.

Staff will propose fees to cover the estimated cost to review applications, perform administrative tasks, determine suitability of vending location, and determine approval of the permit. Additional fees are established to cover the Police Department's costs for conducting a criminal history check and for Youth Parks & Community Enrichment staff to review applications for park permits.

Financial Considerations: Staff will return to Council with a Resolution wherein permit fees will offset the City's costs associated with this program. To keep permit fees affordable, enforcement costs are not included and will be offset through citation fees. Staff will reevaluate the cost of the program periodically to determine any necessary fee adjustments.

Local Business Enterprise (LBE): Not Applicable.