



CITY COUNCIL AGENDA REPORT

MEETING DATE: FEBRUARY 18, 2020 ITEM NUMBER: PH-1

SUBJECT: INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING SECTIONS 9-125 (BUSINESSES, PROFESSIONS, TRADES AND OCCUPATIONS REQUIRING A PERMIT UNDER THE PROVISIONS OF THIS CHAPTER) AND 9-128 (BUSINESSES WHERE THE DIRECTOR OF FINANCE MAY ISSUE PERMITS IN CASE OF NO OBJECTION) OF ARTICLE 1 (GENERALLY) AND ARTICLE 9 (PUSHCART AND OTHER SIDEWALK VENDORS), OF CHAPTER II (REGULATION OF CERTAIN BUSINESSES) OF TITLE 9 (LICENSES AND BUSINESS REGULATION) OF THE COSTA MESA MUNICIPAL CODE, RELATING TO SIDEWALK VENDING

DATE: FEBRUARY 4, 2020

FROM: FINANCE DEPARTMENT/CITY ATTORNEY'S OFFICE

PRESENTATION BY: TARQUIN PREZIOSI, ASSISTANT CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: JENNIFER KING, ASSISTANT FINANCE DIRECTOR (714) 754-5219

RECOMMENDATION:

Staff recommends that the City Council:

1. Find that the adoption of this Ordinance is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21065, and that it is exempt from the provisions of CEQA pursuant to CEQA Guidelines (14 Cal. Code. Regs. § 15000, et seq.) Section 15061(b)(3) (because it can be seen with certainty that the adoption of this Ordinance will not have an effect on the environment) such that no environmental review under CEQA is required.
2. Introduce for first reading, by title only, proposed Ordinance No. 20-xx amending Sections 9-125 (Businesses, Professions, Trades and Occupations Requiring a Permit Under the Provisions of this Chapter) and 9-128 (Businesses Where the Director of Finance May Issue Permits in Case of No Objection) of Article 1 (Generally) and the provisions of Article 9 (Pushcart and Other Sidewalk Vendors) of Chapter II (Regulation of Certain Businesses) of Title 9 (Licenses and Business Regulation) of the Costa Mesa Municipal Code, relating to Sidewalk Vending.

BACKGROUND:

Effective January 1, 2019, Senate Bill 946 (“SB 946”) adds Chapter 6.2 to the portion of the Government Code applicable to the government of cities and counties. By its own terms, it applies to both general law and charter cities¹ and defines a “sidewalk vendor” as someone who “sells food or merchandise,” on a sidewalk or pedestrian path, with or without a pushcart, stand or other conveyance.² It prohibits³ local agencies from regulating sidewalk vendors except in accordance with Government Code Sections 51038 and 51039, and provides that existing ordinances regulating sidewalk vendors remain valid so long as they substantially comply with SB 946.⁴

According to its authors, SB 946 was intended to increase economic opportunities to low-income and immigrant communities, increase access to culturally significant food and merchandise. To contribute to safe and dynamic public spaces, SB 946 limits local authority to regulate sidewalk vendors. Any local regulations on sidewalk vendors must comply with newly enacted state laws that generally limit local authority to impose regulations that are directly related to “objective health, safety or welfare concerns.” SB 946 also limits penalties for violating local regulations to administrative fines, but does allow cities to enact a permitting scheme and prohibit sidewalk vending near farmer’s markets, swap meets, and other events.

If a local agency adopts sidewalk vendor regulations, these regulations must comply with the following standards:

- The regulations cannot require the sidewalk vendor to only operate within specific parts of the public right of way except when the restriction is directly related to objective health, safety or welfare concerns.⁵
- The regulations cannot prohibit sidewalk vendors from operating in a public park, but the regulations can prohibit stationary sidewalk vending where the city already has an agreement with a third party for exclusive concessions inside the park. A city can also adopt reasonable time, manner and place restrictions inside public parks if the restrictions are directly related to objective health, safety or welfare concerns, when necessary to ensure the public’s use and enjoyment of the park, or necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the character of the park.⁶
- The regulations cannot require a sidewalk vendor to obtain the approval of a non-governmental entity before selling food or merchandise.⁷
- The regulations cannot restrict sidewalk vendors to operate only in designated neighborhoods except when the restriction is directly related to objective health, safety or welfare concerns. Cities can prohibit *stationary* sidewalk vendors from operating in residential zones, but cannot prohibit roaming sidewalk vendors.⁸

¹ Cal. Gov. Code § 51036(d).

² Cal. Gov. Code § 51036(a).

³ Cal. Gov. Code § 51037(a).

⁴ Cal. Gov. Code § 51037(c).

⁵ Cal. Gov. Code § 51038(b)(1).

⁶ Cal. Gov. Code § 51038(b)(2).

⁷ Cal. Gov. Code § 51038(b)(3).

⁸ Cal. Gov. Code § 51038(b)(4).

- The regulations cannot restrict the overall number of sidewalk vendors permitted to operate within a jurisdiction, unless the restriction is directly related to objective health, safety or welfare concerns.⁹
- The regulations can limit the hours of operation for sidewalk vendors so long as they are not unduly restrictive. In commercial areas, these restrictions cannot be more restrictive than any limitations on other businesses on the same street.¹⁰
- The regulations can impose sanitary conditions and requirements to comply with disabled access standards.¹¹
- The regulations can require sidewalk vendors to obtain a permit or business license, so long as the regulations do not require a social security number from the perspective permittee.¹²
- The regulations can require sidewalk vendors to submit information to the city regarding their operations, including a mailing address, a description of merchandise, and other information.¹³
- The regulations can prohibit sidewalk vendors from operating near farmers' markets, swap meets, and other events subject to a special permit.¹⁴

SB 946 makes clear that perceived community animus and economic competition do not constitute objective health, safety or welfare concerns.¹⁵ The new law also limits penalties for violating local regulations on sidewalk vendors to administrative citations, the amounts of which range from \$100-\$500 for most violations and fines ranging from \$250-\$1,000 for vending without a permit.¹⁶ Criminal penalties and arrest are not available to cities as enforcement tools.¹⁷ Finally, cities are required to give notice to a cited individual that he/she has the right to request an ability-to-pay determination before the administrative fine adjudicator.¹⁸

On October 15, 2019, the City Council considered the introduction of proposed Ordinance 19-xx in order to establish regulations for sidewalk vending in compliance with SB 946. An analysis of the proposed Ordinance is set forth in the City Council Agenda Report dated October 15, 2019. (Attachment 1.) At the October 15th hearing, the City Council directed revisions and modifications to the proposed ordinance as discussed below.

ANALYSIS:

Following the October 15th hearing, staff from the various City departments involved in drafting the Ordinance, including Development Services, Finance, Police, Public Services and the City Attorney's office, reconvened in order to address the City Council's concerns. Pursuant to Council direction, staff has made the following substantive revisions to the Ordinance:

- Deleted the prohibitions against displaying merchandise or food that it not available for sale;

⁹ Cal. Gov. Code § 51038(b)(5).

¹⁰ Cal. Gov. Code § 51038(c)(1).

¹¹ Cal. Gov. Code § 51038(c)(2)-(3).

¹² Cal. Gov. Code § 51038(c)(4).

¹³ Cal. Gov. Code § 51038(c)(8).

¹⁴ Cal. Gov. Code § 51038(d).

¹⁵ Cal. Gov. Code § 51038(e).

¹⁶ Cal. Gov. Code § 51039(a).

¹⁷ Cal. Gov. Code § 51039(d).

¹⁸ Cal. Gov. Code § 51039(f).

- Deleted the prohibitions against advertising products or services that are not related to the food or merchandise for sale;
- Added clear prohibitions against vending directly to persons in vehicles;
- Added weapons as specified, explosives and fireworks to the list of prohibited items;
- Regarding vending in residential zones,
 - expanded the proposed operating in hours in residential zones from 9:00 a.m. to 5:00 p.m. to 8:00 a.m. to sunset,
 - added an exception to allow vending in a residentially zoned park after sunset if that park is otherwise lawfully open, and
 - deleted “immediately adjacent to” in order to clarify that these restrictions only apply within residentially zoned areas;
- Removed the operating hours in all other areas of the City;
- Removed Civic Center Park from the prohibition against vending at the Civic Center;
- Removed the prohibition against vending on sidewalks adjacent to the Fairgrounds while the fair is in session;
- Removed the prohibitions against vending within 200 feet of a farmers market or an area designated for a special event;
- Added an exception to the prohibition against vending within 100 feet of a school, daycare center or place of worship in order to allow vending while that institution is holding a public event, such as a fair or carnival;
- Removed prohibitions from renting within 100 feet of a City facility that is selling food or merchandise; and
- Removed the prohibitions (applicable to stationary sidewalk vendors) from vending at those parks that have an exclusive concession agreement with the City.

In addition, staff have made other conforming and non-substantive revisions to the Ordinance. The revisions are depicted in Exhibit 2.

In addition, the City Manager’s Office and Finance Department reached out to the Costa Mesa Chamber of Commerce in order to obtain feedback from the Chamber regarding the draft Sidewalk Vendor regulations. The Chamber responded that they were in agreement with the proposed ordinance.

ALTERNATIVES CONSIDERED:

The City Council could decide not to substantively regulate sidewalk vendors at all, other than to require a regular business license. In that case, the Council may consider repealing the existing prohibitions in Article 9 of Chapter II of Title 9 that conflict with SB 946. In addition, the City Council could propose different or additional requirements for sidewalk vending that are consistent with the requirements of SB 946.

FISCAL REVIEW:

The proposed Ordinance allows the City to regulate sidewalk vending activity in accordance with State laws. Subject to the City Council’s introduction and first reading of Ordinance No. 20-xx, staff will return to the City Council for adoption of a resolution establishing the proposed sidewalk vendor permit fees at full cost recovery.

LEGAL REVIEW:

The City Attorney's Office has reviewed and approved this report and has prepared the attached Ordinance.

CITY COUNCIL GOALS & PRIORITIES:

This item is administrative in nature.

CONCLUSION:

Staff recommends the City Council, by separate motions:

1. Find that that adoption of this Ordinance is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21065, and that each is exempt from the provisions of CEQA pursuant to CEQA Guidelines (14 Cal. Code. Regs. § 15000, et seq.) Section 15061(b)(3) (because it can be seen with certainty that the adoption of this Ordinance will not have an effect on the environment) such that no environmental review under CEQA is required.
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JENNIFER KING, CPA
Assistant Finance Director

KELLY A. TELFORD, CPA
Finance Director

KIMBERLY HALL BARLOW
City Attorney

ATTACHMENT:

1. [October 15, 2019 Agenda Report](#)
2. [Proposed Ordinance No. 20-XX \(redline\)](#)
3. [Proposed Ordinance No. 20-xx \(clean\)](#)