



LEGISLATIVE ALERT: SB 946 - SAFE SIDEWALK VENDING ACT

Recently enacted California Senate Bill 946 (“SB 946” - the “Safe Sidewalk Vending Act”) establishes requirements for local regulation of sidewalk vending. The law also prohibits all criminal penalties for sidewalk vending violations, and allows anyone currently or previously prosecuted for a sidewalk vending violation to have a pending prosecution, sentence, fine, or conviction dismissed. The law becomes effective January 1, 2019 and may require local authorities to adopt regulations governing sidewalk vending or amend existing regulations. This legislative alert is intended to provide information about the new law for cities and counties and other interested stakeholders.

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Legislative purpose.

Sidewalk vendors are a fixture in California’s communities and a part of the state’s vibrant culture. However, outdated local laws throughout the state have been used to exclude vendors from the formal economy and routinely expose these entrepreneurs, many of whom are immigrants, to harassment, criminal prosecution, and even deportation. The purpose of SB 946 is to legalize and decriminalize sidewalk vending across the state. Specifically, the bill establishes parameters for local regulation of sidewalk vending and prohibits local authorities from imposing criminal penalties on sidewalk vendors.

Definitions.

SB 946 defines “sidewalk vendor” as a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack or other nonmotorized conveyance, or from one’s person, on a public sidewalk or other pedestrian path. A sidewalk vendor can be “a roaming sidewalk vendor,” which is defined as moving from place to place and stopping only to complete a transaction, or “a stationary vendor,” which is defined as vending from a fixed location.

SB 946 defines “local authority” as a charter or general law city, county or city and county. As such, SB 946 applies to charter cities.

SB 946 does not require a local authority to regulate sidewalk vending.

If a local authority does not have much sidewalk vending in its jurisdiction and therefore does not currently impose regulations on the activity, the local authority would be free to continue in this manner. As long as the local authority does not regulate or cite vendors, no other steps would be necessary.

SB 946 does not alter local, state, or federal laws regarding the accessibility of public right of ways, the sale of counterfeit or dangerous goods, or food safety laws. However, a local authority may not regulate sidewalk vending except in accordance with SB 946. If a local authority does not adopt a program to regulate sidewalk vending that complies with the statute, the local authority may not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the statute.

A local authority may only regulate sidewalk vending in a manner consistent with SB 946.

If the local authority wishes to regulate sidewalk vending, then those regulations need to be consistent with SB 946. If a city does not currently have sidewalk vending regulations in place, but wishes to create a new set of regulations, the new regulations would need to be consistent with SB 946.

If a local authority currently has sidewalk vending regulations in place, then it would need to determine whether those regulations comply with SB 946. If existing regulations comply with SB 946, no further action is necessary by the local authority. If some or all existing regulations are not consistent with SB 946, the local authority will need to take steps to achieve compliance.

SB 946 includes certain standards with which a sidewalk vending regulatory program must comply.

Any sidewalk vending regulations adopted or enforced by a local authority must comply with the following standards:

- Cannot require a sidewalk vendor to operate within specific parts of the public right-of-way, except when the restriction is directly related to objective health, safety, or welfare concerns. This provision does not prohibit a local authority from granting a permit to vend in a specific location upon the request of a vendor applicant;
- Cannot prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in a park if there is an existing agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire. A local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in parks if the requirements are: 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;

- Cannot require a sidewalk vendor to obtain the consent or approval of any nongovernmental entity or individual, such as a nearby business, before the vendor can sell food or merchandise;
- Cannot restrict sidewalk vendors to designated neighborhoods or areas, except when the restriction is directly related to objective health, safety or welfare concerns. However, a local authority may prohibit stationary sidewalk vendors in areas zoned exclusively residential where no commercial activity is permitted, but a local authority cannot prohibit roaming sidewalk vendors in such areas; and
- Cannot restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction, unless the restriction is directly related to objective health, safety, or welfare concerns.

SB 946 enables a local authority to impose time, place, and manner restrictions on sidewalk vending.

Under SB 946, local authorities may impose time, place, and manner restrictions on sidewalk vending. The local authority must ensure that the existing or proposed time, place, and manner restrictions are directly related to objective health, safety, or welfare concerns. Perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern. Examples of time, place, and manner restrictions include but are not limited to:

- Limitations on hours of operation that are not unduly restrictive;
- Requirements to maintain sanitary conditions;
- Requirements necessary to ensure compliance with the federal Americans with Disabilities Act and other disability access standards;
- Requirements to obtain a permit or valid business license, possess a seller's permit from the California Department of Tax and Fee Administration, or obtain additional licenses from other state or local agencies to the extent required by law; and/or
- Requirements that a sidewalk vendor submit information on his or her operations.

This list only represents a sample of allowable time, place, and manner restrictions. A local authority is not required under SB 946 to adopt all or any of the above restrictions. Additional time, place, and manner restrictions may be imposed, but any such restrictions must be directly related to objective health, safety, or welfare concerns. For example, a local authority may not impose an arbitrary limit on the number of vendors per block or impose a required distance between vendors unless the local authority can demonstrate that such restrictions are directly related to objective health, safety, or welfare concerns.

In addition to the above time, place, and manner restrictions, a local authority may also prohibit sidewalk vending within the immediate vicinity of a permitted farmers' market or swap meet during their operating hours. A local authority may also restrict or prohibit sidewalk vending within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, such as a permit for filming, a parade or an outdoor concert.

SB 946 allows, but does not require, a local sidewalk vending permitting program.

SB 946 allows a local authority to create a permitting program for sidewalk vending. When issuing a local sidewalk vending permit, the local authority must accept 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. The number collected is confidential and cannot be made available to the public for inspection. Any collection of information for a business license must be consistent with Assembly Bill 2184 (Chiu 2018).

SB 946 does not affect the applicability of state food safety laws.

SB 946 does not limit or otherwise affect the applicability of the California Retail Food Code, which imposes requirements and restrictions on sidewalk vendors selling certain types of food. Any applicable health and food safety standards imposed by the California Retail Food Code will continue to apply. When regulating sidewalk vending, a local authority may take steps to encourage compliance with state food safety laws, including requiring a valid health permit (if otherwise required by law) before granting a local sidewalk vending permit.

SB 946 prohibits criminal penalties but allows administrative fines for sidewalk vending violations.

Under SB 946, a local authority may not impose criminal penalties, such as misdemeanors or infractions, for sidewalk vending violations. A local authority also may not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with SB 946.

Sidewalk vending violations are only punishable as administrative fines. A violation of a local authority's vending program is punishable *only* by the following administrative fines: \$100 for a first violation; \$200 for a second violation; and \$500 for each additional violation within one year of the first violation. If a local authority requires a sidewalk vendor to obtain a permit, the local authority may impose higher fines for vending without a permit: \$250 for a first violation; \$500 for a second violation; and \$1,000 for each additional violation within one year of the first violation. However, upon proof of a valid permit, a local authority must reduce the fines to the lesser, first set of fines. A local authority can also rescind a permit issued to a sidewalk vendor upon the fourth violation or subsequent violations. Failure to pay an administrative fine shall not be punishable as an infraction or misdemeanor, and no additional fines, fees, assessment or any other financial conditions may be assessed.

If a local authority seeks to impose administrative fines, SB 946 requires that the adjudicator take into account the person's ability to pay the fine. If a person meets criteria, the local authority must accept 20% of the fine in full satisfaction, and can allow the person to complete community service in lieu of paying a fine.

SB 946 provides for the dismissal of pending criminal charges and prior criminal convictions for sidewalk vending.

SB 946 applies to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vending, **and any criminal prosecutions that have not reached final judgment must be dismissed.** Local authorities should take steps to ensure prosecutorial authorities overseeing cases within their jurisdiction are made aware of this significant change in law and dismiss pending cases accordingly.

Additionally, any person who is serving/completed a sentence or who is subject to a fine for a misdemeanor or infraction conviction for sidewalk vending may petition for dismissal of the sentence, fine, or conviction. Unless a party opposing the petition for dismissal proves by clear and convincing evidence that the person seeking the petition is not eligible for dismissal, the court must grant the petition and dismiss and seal the conviction because the sentence, fine, and conviction are legally invalid.

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