



CITY OF POMONA

COUNCIL REPORT

September 9, 2019

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Mark Gluba, Deputy City Manager

**SUBJECT: COUNCIL DIRECTION REGARDING A DRAFT ORDINANCE
PERTAINING TO SIDEWALK VENDING REGULATIONS**

RECOMMENDATION:

It is recommended that the City Council provide staff direction regarding decision points for incorporation into the draft sidewalk vending ordinance and regulations as proposed.

EXECUTIVE SUMMARY:

The City Code currently prohibits sidewalk vending. However, at Council direction, the prohibition has not been enforced since June 2018. Additionally, since January 1, 2019, the City's ordinance prohibiting sidewalk vending has been unenforceable because it conflicts with State law Senate Bill 946 ("SB 946"). The new State law provides that local sidewalk vending violations may not be subject to criminal sanctions (i.e., an infraction or misdemeanor) and also precludes cities from prohibiting sidewalk vending outright while encouraging reasonable regulations.

FISCAL IMPACT: None.

PREVIOUS RELATED ACTION:

In June 2018, the City Council directed staff to cease code enforcement on illegal sidewalk vendors while it reviewed the City's ban on sidewalk vending. In November 2018, the City Attorney and City staff, at the Council's direction, met with members of the community to discuss the potential impact of SB 946; and in December 2018, the Mayor led a community roundtable discussion to further hear from stakeholders about anticipated regulations. On December 12, 2018, in a study session on the issue, the Council discussed the core concerns surrounding sidewalk vending voiced by the community. During the discussion, members of the Council requested that the Interim City Attorney examine the sidewalk vending ordinance adopted by the City of Los Angeles to determine whether it could serve as a model for Pomona's own regulatory program. On July 24, 2019, the Mayor convened another roundtable discussion with community members to receive additional input and to address any outstanding questions from stakeholders while the Interim City Attorney's Office and staff prepared an ordinance for Council consideration. On August 5, 2019,

staff presented the proposed draft ordinance and regulations for Council discussion and to glean additional community input so it could be presented for introduction and adoption at a future date.

DISCUSSION:

Effective January 1 of this year, SB 946 made the regulation and criminalization of sidewalk vending a matter of statewide concern. (This means the law’s restrictions on local regulation apply to charter cities and general law cities alike.) In brief, a city or county may no longer prohibit or regulate sidewalk vending in the public right-of-way or in public parks unless the regulations are tied to reasonable time, place and manner restrictions or objective health, safety or welfare concerns, as specified within the law. Absent local regulations that substantially comply with these statutes, a city may not cite, fine, or prosecute a person for sidewalk vending in violation of a local ordinance. However, irrespective of city laws, sidewalk vendors of food remain subject to State Health and Sanitation requirements.

At the Meeting on August 5, 2019, the City Council listened to public input on the draft ordinance and associated rules and regulations. To provide additional background on this matter, the August 5, 2019 staff report, with all related attachments to amend the City Code to comply with SB 946 and to incorporate clear and enforceable objective sidewalk vending regulations to protect the general health, safety and welfare as allowed under this new law is attached hereto (Attachment 1). While the City Council and speakers during public comment materially supported the ordinance and regulations as proposed, the discussion points in the table below have yet to be addressed to facilitate finalization of the draft ordinance and rules and regulations.

Staff is seeking Council direction on these policy points for inclusion into the draft ordinance (listed in the table below as “Ordinance Components”). Upon receiving direction, staff anticipates bringing the draft ordinance along with the proposed rules and regulations forward for Council consideration at the first meeting in October.

Sidewalk Vending Policy Points

Ordinance Components	Staff Recommendations	Supporting Objective Findings	Comments
Health Permit Requirement	The drafted proposed ordinance remains silent on health permit requirement based on direction provided from previous Council input and community meetings. By not requiring proof of health permit, the City would not mandate or enforce this expensive cost of doing business. Staff supports this approach.	SB 946 expressly provides that sidewalk vendors are not exempt from food safety standards and the requirements for a health permit under the California Retail Food Code. ¹	It is a Council policy decision whether to include in ordinance as criteria for enforcement by the Code Compliance Division.

¹ Gov. Code, § 51037, subd. (b).

Ordinance Components	Staff Recommendations	Supporting Objective Findings	Comments
Cart Size	Staff recommends that carts not exceed a total of 3 feet deep by 6 feet wide including wheels, axles and other appurtenances.	Not limiting the total width of carts would result in indefinite cart sizes, potentially denying other users, (competing sidewalk vendors, pedestrians, etc.) from fair opportunity for safe use/enjoyment of the public right-of-way.	Other cities have established a range of cart size limitations as small as 3' X 3' in Claremont or as large as 3' X 8' in the City of Los Angeles. Staff feels that 3' X 6' is a fair, objective and defensible standard.
Insurance Requirement	Require insurance as part of the program rules and regulations in accordance with standard policy limits required by the Risk Management Division for other similar activities or events held within the public right-of-way	It is standard practice for the City to require insurance for special events or activities taking place in public areas or rights of way to mitigate potential liabilities.	Estimates show that standard \$1 Million policy can be obtained for reasonable premiums estimated under \$700 annually.
Restricted Locations	<p>With the draft Rules and Regulations, staff recommends the following time, place and manner restrictions prohibiting sidewalk vending within 500 feet of the following:</p> <p>The Pomona Arts Colony during the hours of the 2nd Saturday Artwalk;</p> <p>Fox Theater from 6:00 p.m. to 6:00 a.m. on event days;</p> <p>Fairplex every day of the Los Angeles County Fair; and</p> <p>Any public or private kindergarten, elementary, or secondary (K-12) school from 6:00 a.m. to 6:00 p.m. on days that school is open to students.</p>	Staff recommends prohibiting sidewalk vending from occurring during these time and place manner restrictions due to public health and safety concerns arising for the high concentration of pedestrians and associated traffic in these areas as a result of major events.	

ATTACHMENT:

Attachment No. 1 – August 5, 2019, Council Report with Attachments