



CITY OF POMONA

COUNCIL REPORT

August 5, 2019

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Kathy Shin, Interim Deputy City Attorney
Mark Gluba, Deputy City Manager

**SUBJECT: REVIEW AND DISCUSSION OF A DRAFT ORDINANCE
PERTAINING TO SIDEWALK VENDING REGULATIONS**

RECOMMENDATION:

It is recommended that the City Council review the attached Draft Ordinance and Draft Resolution (Attachments 1 & 2) regarding proposed amendments to the City Code Sections pertaining to sidewalk vending, solicit community input on the proposed ordinance and regulations, and provide staff direction on any desired changes to the ordinance or regulations as proposed.

EXECUTIVE SUMMARY:

Sidewalk vending is currently prohibited in the City. However, at Council direction, the prohibition is not currently enforced. Since January 1, 2019, the City's ordinance prohibiting sidewalk vending has been unenforceable because it conflicts with the law enacted by 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. In presenting this item prior to official introduction and first reading of the proposed Ordinance, staff is seeking Council direction and community input regarding the general parameters of the Ordinance, as drafted, in addition to direction on discretionary matters such as cart size limitations, insurance requirements, minimum distance requirements from restricted vending locations, etc.

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 as the Interim City Attorney's Office and staff finalized an ordinance.

ENVIRONMENTAL IMPACT: The proposed ordinance establishing a licensing program for sidewalk vending is not subject to environmental review under the California Environmental Quality Act ("CEQA"). Requiring a business license and a permit for ambulatory vending activities otherwise permitted under state law will not have a significant effect on the environment. Therefore, under section 15378 of Title 14 of the California Code of Regulations ("the CEQA Guidelines"), the proposed ordinance is not a "project" subject to CEQA.

DISCUSSION:

Senate Bill No. 946

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.) SB 946 was enacted to promote entrepreneurship and to provide economic opportunities for immigrant and low-income communities. The Legislature found that sidewalk vending increases access to desired goods (such as culturally significant food and merchandise) and contributes to safe and dynamic public spaces. State lawmakers also sought to take a stand against aggressive federal immigration policies that prioritized the deportation of persons charged with minor offenses, including violation of local street vending ordinances. Accordingly, SB 946 was enacted to decriminalize sidewalk vending and to encourage local authorities to properly regulate the activity.

In brief, a city or county may no longer prohibit or regulate sidewalk vending in the public right-of-way or in public parks except in accordance with California Government Code sections 51038 and 51039. 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. 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

Scope of sidewalk vending

SB 946 is limited to the local regulation of "sidewalk vendors," which is 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**

¹ Gov. Code, § 51037, subd. (b).

pedestrian path.”² While sidewalk and pedestrian path are not defined in the statute, the locations generally designate the public right of way and public parks.

Accordingly, food trucks and other forms of vending from motor vehicles fall outside the scope of the new law. Ambulatory vending along roadways or other places not designated for pedestrian travel and vending on private property are also not sidewalk vending within the meaning of SB 946.

For example, outdoor food stands operated by brick-and-mortar restaurants and groceries (in parking lots or other open space adjacent to the permanent place of business) are typically operating on private property. If so, the stands are not sidewalk vending.

Enforcement

Legalizing sidewalk vending is one of the central features of SB 946. To avoid state complicity in the federal deportation of individuals for infractions and misdemeanors, the law prohibits California cities from criminalizing sidewalk vending violations. Rather, an administrative fine is the only permissible penalty for local vending violations and only in amounts set forth in statute:

- A. If the City requires sidewalk vendors to obtain a permit, vending without a permit is subject to a fine not to exceed the following amounts:
 - 1. \$250 for a first violation.
 - 2. \$500 for a second violation within one year of the first violation.
 - 3. \$1,000 for each additional violation within one year of the first violation.
 - 4. Upon proof of a valid permit issued by the City, the administrative fine assessed under this paragraph will be reduced to the corresponding administrative fine set forth in paragraph (B).
- B. Any other violations of a City’s sidewalk vending program is subject to a fine not to exceed the following amounts:
 - 1. \$100 for a first violation.
 - 2. \$200 for a second violation within one year of the first violation.
 - 3. \$500 for each additional violation within one year of the first violation.
 - 4. The City may revoke a sidewalk vending permit for the remainder of the permit’s term upon the fourth or subsequent violations.³

The law also requires cities to consider a person’s ability to pay when assessing fines. Local authorities have a duty to notify vendors of their right to request an ability-to-pay determination and to furnish individuals with instructions or other materials about the process.

Local Regulation

² Gov. Code, § 51036, subd. (a).

³ Gov. Code, § 51039, subd. (a).

In addition to decriminalizing the activity, SB 946 restricts a city's authority to prohibit sidewalk vending outright. State law now recognizes sidewalk vending as a legitimate way of earning a living and cities are limited to reasonable time, place, and manner regulations, as specified.

In general, a city may not restrict sidewalk vending in the public right-of-way ("ROW") or restrict the overall number of vendors permitted to operate within the city unless the restriction is "directly related to objective health, safety, or welfare concerns."⁴ For example, a city may restrict vending at a location that could not accommodate both the activity and the minimum pedestrian clearance required by objective state and federal disability access standards.

"Perceived community animus" and "economic competition" do not constitute an objective public concern and cannot be grounds for restricting sidewalk vending.⁵ The City also cannot require sidewalk vendors to obtain the consent or approval of residents or local businesses before being permitted to operate.⁶

Despite this general limitation on restrictions in the ROW, SB 946 identifies distinct regions in a city wherein sidewalk vending may occur and specifies the permitted level of regulation therein as follows:

- ✓ *Residential zones.* Stationary vendors may be prohibited outright in residential zones, but roaming vendors may only be restricted for objective health, safety, or welfare reasons (e.g., reasonable restrictions on hours of operation would be permissible).⁷
- ✓ *Permitted temporary events.* Cities may prohibit vending within the "immediate vicinity" of a certified farmers' market, specified swap meet, or other permitted events that require the temporary use of, or encroachment on, the sidewalk or other public area, *during the limited hours of the event.*⁸
- ✓ *Public parks* (including recreational facilities). Stationary vendors may be prohibited outright from operating in a park for which the city has entered an exclusive concessionaire agreement. Otherwise, vendors may be restricted in a park owned or operated by the City, if the requirements are any of the following:
 - Directly related to objective health, safety, or welfare concerns;
 - 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.⁹

⁴ Gov. Code, § 51038, subd. (b).

⁵ Gov. Code, § 51038, subd. (e).

⁶ Gov. Code, § 51038, subd. (b)(3).

⁷ Gov. Code, § 51038, subd. (b)(4)(B).

⁸ Gov. Code, § 51038, subd. (d).

⁹ Gov. Code, § 51038, subd. (b)(2).

- ✓ *The public right of way.* The default rule is objective health, safety, and welfare concerns and SB 946 sets forth examples of what suffices as an objective public regulation:
- limitations on hours of operation in commercial areas that are no more restrictive than the restrictions imposed on brick-and-mortar businesses on the same street;
 - requirements to maintain sanitary conditions;
 - requirements to ensure compliance with disability access laws;
 - requiring compliance with other generally applicable laws; or
 - requiring a vending permit or business license.¹⁰

As these regulatory tools are expressly permitted by statute, a city may readily adopt them by ordinance or resolution. To be clear, the time, place, and manner regulations set forth in subdivision (c) of Government Code section 51038 above do not constitute an exhaustive list of permissible regulations (they are examples). However, other regulations may require more justification to show the City's objective reasons for the restriction. Such reasons may be set forth in the recitals of an implementing ordinance or resolution.

Summary of Proposed Ordinance and Resolution

The draft ordinance ("Attachment No. 1") would amend the Pomona City Code to repeal the existing ban on sidewalk vending and to adopt a regulatory scheme consistent with state law. While the ordinance establishes the structural provisions of the City's regulatory program, the proposed resolution ("Attachment No. 2") sets forth the detailed rules and regulations critical to enforcement. The regulations are adopted by resolution in order to facilitate any future additions and amendments to the program.

Licensing and permitting program

As proposed, the regulation of sidewalk vending in Pomona is limited to a business licensing and permitting program administered by the Finance Department and Code Enforcement. All owners of vending carts are required to obtain a business license and all vendors are required to obtain a vendor permit (similar to the owner/operator licenses and driver permits used to regulate taxicabs). Carts will be required to display a business license number during operations while individual vendors will be required to keep permits on their person.

Applicants for a license or a permit will be issued an informational handout summarizing the operating requirements set forth in the Rules and Regulations. Licensees and permittees will have signed an acknowledgement of and intent to comply with these requirements. Staff will not engage in cart inspections. Rather, vendors violating any applicable location, placement, or operating requirements may be subject to citation.

Cost barriers to entry

¹⁰ See generally, Gov. Code, § 51038, subd. (c).

While SB 946 removed many of the legal barriers to sidewalk vending, members of the community have expressed concerns that regulatory fees can still be prohibitive. The greatest potential cost barriers are insurance and health permits.

- Insurance requirements. The sale of food and merchandise to the public in the public right of way inevitably creates the possibility of personal injury or damage to property arising from the activity. The City is thus exposed to the risk of liability. While vendors are required to sign agreements to indemnify and defend the City against any claim of damage from third-parties injured by vending operations (for example, a pedestrian injured by a moving cart or a consumer alleging food poisoning), a vendor without insurance is unlikely to be able to fulfill indemnity obligations in case of an accident. For this reason, the City, as advised by the City Risk Manager, typically requires licensed vendors to obtain standard commercial general liability insurance, naming the City as an additional insured. This is common. Staff has not determined what the premiums for such a liability policy may be, but depending on the vendor, it may or may not be prohibitive.¹¹ Whether the City should require sidewalk vendors to obtain insurance, and if so, what level of insurance, comes down to a policy determination of whether the potential risks will be a cost of doing business for the vendor or for the City.
- Health permits. The State establishes uniform health and sanitation standards for any retail food facility (defined as “an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level”), including food carts.¹² The County environmental health department is in charge of enforcing these standards through health permits issued after conducting cart inspections. Members of the community have indicated that the costs of obtaining a health permit for a food cart can be prohibitive. (The costs of acquiring a cart that complies with state requirements alone, including the requirement for a hand-washing sink, may be beyond most vendors means.¹³) Again, SB 946 leaves the administration and enforcement of food safety regulations to county health officials. The City is not aware of any complaints or reports of food-related illnesses arising from the sale of snow cones, tamales, or other types of food vending occurring in the City. Therefore, staff recommends leaving the matter of health permits to the experts at County health.

Health and sanitation

Separate from food facility permits, State law also requires all food handlers to receive basic training in topics such as foodborne illnesses, preventing food contamination in all stages of food handling, and sanitizing equipment. Training and passing a related exam results in a food handler’s card. In the effort to advance public health, State law requires that the food handler’s card be affordable (\$15).¹⁴ Given this practical effort to protect consumers and train food vendors, staff recommends requiring all sidewalk vendors of food to obtain a food handler’s card.

¹¹ Some insurance agents have quoted a \$ 570 annual premium for the standard \$ 1 million commercial general liability policy for a hypothetical hot dog vendor.

¹² Health & Saf. Code, § 113789.

¹³ See Health & Saf. Code, § 114311.

¹⁴ See Health & Saf. Code, § 113948, subd. (g).

To address larger concerns about trash and sanitation, the Rules and Regulations (a component of the Draft Resolution) also require all vendors to operate with trash receptacles and to take responsibility for removal of litter or trash generated by their vending operations, as specified.

Restricted vending locations

At this time, in addition to the general restrictions respecting residential zones and the placement of carts in the right of way, staff has identified the following venues as areas in which vending should be restricted:

- (1) The Pomona Arts Colony during the hours of the 2nd Saturday Artwalk;
- (2) Sidewalks within 500 feet of the Fox Theater from 6:00 p.m. to 6:00 a.m. on event days;
- (3) Sidewalks within 500 feet of the Fairplex every day of the Los Angeles County Fair; and
- (4) Sidewalks within 500 feet 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

Vending in parks is also restricted to paved pedestrian paths so as to protect the community's use and enjoyment of grassy open space, ballfields, and the City's other recreational resources.

Size limits on carts

As requested by Councilmembers at the December 12th Study Session, staff has examined the sidewalk vending ordinance and regulations adopted by the City of Los Angeles. While Los Angeles adopted an ordinance and general regulations in 2018, the City is still in the process of developing its licensing and permitting program. Questions relating to insurance requirements and maximum size limitations on carts have yet to be determined by Los Angeles, and staff requests the Council's direction on these matters.

The restrictions on the placement of carts in the right of way (set forth in Section 2 of the Rules and Regulations) effectively provide that carts may have a depth of no greater than 3.5 feet. Staff is examining reasonable height and length restrictions. For reference, the City of Claremont recently adapted the City of Newport Beach's sidewalk vending ordinance for its own regulatory program. Whereas Newport Beach set height, width, and length limitations on carts at 4 feet x 4 feet x 4 feet; Claremont has adopted cart limitations of 3 feet x 3 feet x 3 feet.

ATTACHMENTS:

Attachment No. 1 – Draft Ordinance
Attachment No. 2 – Draft Resolution

ORDINANCE NO. XXXX

**AN ORDINANCE OF THE CITY OF POMONA, CALIFORNIA,
AMENDING ARTICLE X OF CHAPTER 30 OF THE POMONA CITY
CODE TO CREATE A SIDEWALK VENDING PROGRAM, AND
AMENDING SECTION 38-73 RELATING TO VENDING IN PARKS**

THE CITY COUNCIL OF THE CITY OF POMONA DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

A. In 2018, the California Legislature passed Senate Bill 946 (“SB 946”) which prohibits cities from banning sidewalk vending outright or from otherwise restricting sidewalk vendors in the public right-of-way and in public parks, except in accordance with California Government Code section 51038 and 51039;

B. The Pomona City Code currently prohibits sidewalk vending, and as the City Code is in conflict with state law, it is unenforceable;

C. The regulatory scheme authorized herein is consistent with SB 946 because it adopts restrictions expressly authorized by the statute or are otherwise based on objective health, safety, and welfare concerns posed by sidewalk vending, including ensuring paths of travel required by disability access laws and requiring sanitation measures in the interests of food safety and the public health;

D. Sidewalk vending has a relatively low barrier to entry, which encourages entrepreneurship and affords economic opportunity for people to support themselves and their families, which are among the City’s core values;

E. Regulating sidewalk vending is necessary to provide some consumer protection in the sale of food and merchandise to the public and to coordinate the diverse uses of the public right of way in the interests of the public’s health, safety, and welfare;

F. Requiring licenses and permits to vend on sidewalks and in parks benefits the health and safety because it increases vendor accountability by facilitating enforcement of the City’s rules and regulations and protects vendors permitted to vend in specified locations; a licensing program also facilitates lines of communication between the City and its vendors and better equips the City to ensure that vending does not adversely affect the public welfare;

G. In light of the foregoing, the City Council finds that regulation of sidewalk vending benefits the City as a whole as it leads to orderly commerce;

H. Therefore, the City Council hereby adopts this Ordinance pursuant to the authority granted under SB 946.

SECTION 2. Chapter 30, Article X of the Pomona City Code (“Foot and Pushcart Vendors”) is hereby amended in its entirety to read as follows:

ARTICLE X. – SIDEWALK VENDING

Sec. 30-671. - Definitions.

For purposes of this article, the following definitions shall apply unless the context clearly requires a different meaning:

Cart means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending.

Cart owner means a person who owns or controls the operations of one or more carts and includes a self-employed, independent sidewalk vendor.

Certified farmers' market means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter, or any successor chapter.

Citation means an Administrative Citation issued pursuant to section 2.1184 of Article X, Chapter 2 of this code.

City means the City of Pomona.

City Manager means the City Manager or his or her designee.

County means the County of Los Angeles.

Food means any type of edible substance or beverage.

Merchandise means any good that is not food or an item for rent.

Park means any public park or recreational facility, including the Pomona City Civic Plaza, under the jurisdiction of the City Parks and Recreation Commission.

Pedestrian path means any paved path or walkway owned or controlled by the City and intended specifically for pedestrian travel.

Roaming sidewalk vendor means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

Rules and Regulations means detailed requirements respecting sidewalk vending designed to supplement this Article.

Sidewalk means a public sidewalk as defined in Sec. 1-2 of this code.

Sidewalk vendor or *vendor* means a person who sells or offers for sale food or merchandise from a cart or from one's person, upon a public sidewalk or other pedestrian path.

Sidewalk vending means commercial activity that qualifies a person as a sidewalk vendor.

Stationary sidewalk vendor means a sidewalk vendor who operates from a fixed location.

Swap meet means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article, or any successor article.

Temporary event permit means a permit issued by the City for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or a permit for gatherings in public parks issued under Sec. 38-76, for purposes including, but not limited to, filming, parades, or outdoor concerts.

Sec. 30-672. – Rules and Regulations

Rules and Regulations to implement the Sidewalk Vending Program will be developed and recommended by the City Manager and adopted by the City Council through resolution. The City shall post the Rules and Regulations on its website.

Sec. 30-673. – License and Permit Requirements

(a) Business Licenses.

- (1) No cart owner may engage in sidewalk vending or engage vendors to operate a cart within the City without first obtaining a license from the Finance Department.
- (2) Applicants for a sidewalk vending business license shall submit the information and complete the process set forth in the Rules and Regulations.
- (3) A license shall be valid for one (1) year after the date of issuance, unless it is revoked prior to that date.
- (4) No license is transferable. Any change in ownership or operation of a cart requires a new permit under this article.
- (5) Licenses must be renewed prior to expiration according to procedures established by the Finance Director. Unless timely renewed, any license shall become null and void at the end of its term.
- (6) Applicants must pay an application or renewal fee as established by the Rules and Regulations.

(b) Vendor Permits.

- (1) No vendor may engage in sidewalk vending without first obtaining a permit from the Finance Department.
- (2) Applicants for a vendor permit shall complete the process set forth in the Rules and Regulations.

- (3) Permits shall be valid for one (1) year after the date of issuance, unless it is revoked prior to that date, and must be renewed prior to expiration.

Sec. 30-674. – Restricted Vending Locations

Vending may be restricted or prohibited in specified limited areas of the City based on objective health, safety, and welfare concerns, or to ensure the public's use and enjoyment of City parks. These restrictions or prohibitions shall be detailed in the Rules and Regulations and adopted by the City Council through resolution.

Sec. 30-675. – Operating Requirements

At all times, a sidewalk vendor must operate in compliance with the Rules and Regulations.

Sec. 30-676. – Application Review; Grounds for Denial

(a) The Finance Director may deny an application for a sidewalk vending license or permit if he or she makes any of the following findings:

- (1) Applicant's proposed vending operations violate the requirements of this article or the Rules and Regulations.
- (2) The applicant has made one or more material misstatements in the application.
- (3) The applicant has failed to submit a substantially complete application.
- (4) The applicant has had a sidewalk vending license revoked within the preceding twelve (12) months, beginning January 1, 2019.

(b) If an application is denied, the reasons for denial shall be noted on the application and the applicant shall be notified that no license or permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form.

Sec. 30-677. – License or Permit Revocation

(a) A license may be revoked for the licensee's fourth or subsequent violation of this article or the Rules and Regulations, or for any serious violations of the law, including, but not limited to the following:

- (1) Fraud or misrepresentation in the course of vending;
- (2) Fraud or misrepresentation in the application for a license or permit;
- (3) Vending in a manner that creates a public nuisance or constitutes a danger to the public;

- (4) Engaging in criminal activity in the course of sidewalk vending.
- (b) Notice of a revocation shall be mailed to the named licensee or permittee.

Sec. 30-678. – Exemptions

- (a) A sidewalk vending license or permit shall not be required for the following activities:
 - (1) The sale of agriculture products on the site where the product is grown.
 - (2) Catering for private parties held exclusively on private property and not open to the general public.
 - (3) Events permitted pursuant to a lawfully issued temporary or special event permit including but not limited to a Certified Farmers' Market, Swap Meet, street fairs, outdoor concerts, sport league opening day, and business sidewalk sales

Sec. 30-679. – Appeals

Decisions to deny an application for a license or permit or to revoke a license or permit may be appealed by the applicant or licensee in accordance with the procedures for administrative hearings contained in Pomona City Code section 2-1188.

Sec. 30-680. – Penalties

- (a) A violation of this article or of the Rules and Regulations shall not be prosecuted as an infraction or a misdemeanor and no person will be subject to arrest for violating this article except when otherwise permitted under law.
- (b) A violation of this article or of the Rules and Regulations may only be punished by an administrative citation subject to the following schedule of fines:
 - (1) \$100 for a first violation.
 - (2) \$200 for a second violation within one (1) year of the first violation.
 - (3) \$500 for the third violation and every subsequent violation within one (1) year of the first violation.
 - (4) A vending license or permit may be revoked for the remainder of its term upon the fourth or subsequent violation.
- (c) Notwithstanding any other provisions of this code, failure to pay an administrative fine assessed under this section shall not be punishable as an infraction or a misdemeanor.

- (d) Additional fines, fees, assessments, or any other financial conditions beyond those authorized by this section shall not be assessed.
- (e) When assessing an administrative fine pursuant to this article, the adjudicator shall take into consideration a vendor's ability to pay the fine.
 - (1) The City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall provide instructions or other materials for requesting an ability-to-pay determination.
 - (2) A person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.
 - (3) If a person meets the criteria described in subdivision (a) or (b) of Government Code section 68632 (respecting the receipt of specified public benefits and monthly income relative to current poverty guidelines, respectively) the City shall accept twenty (20) percent of the amount imposed under subsection (a) of this section as full satisfaction thereof.
 - (4) The City may also allow the person to complete community service in lieu of paying the total administrative fine, waive the fine, or offer an alternative disposition.

SECTION 3. Section 38-73, subsection (7) of Chapter 38, Article III of the Pomona City Code is hereby repealed and the following subsections renumbered in sequence.

SECTION 4. CEQA. The City Council has determined that the proposed ordinance establishing a licensing program for sidewalk vending is not subject to environmental review under the California Environmental Quality Act ("CEQA"). Requiring a business license and a permit for ambulatory vending activities otherwise permitted under state law will not have a significant effect on the environment. Therefore, under section 15378 of Title 14 of the California Code of Regulations ("the CEQA Guidelines"), the proposed ordinance is not a "project" subject to CEQA.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

SECTION 6. The City Clerk shall attest to the passage and adoption of this ordinance, causing it to be posted as required by law, and it shall become effective thirty (30) days after its adoption.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2019.

Tim Sandoval
Mayor

ATTEST:

Rosalia A. Butler, MMC
City Clerk

APPROVED AS TO FORM:

Interim City Attorney

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, ROSALIA A. BUTLER, City Clerk of the City of Pomona do hereby certify that the foregoing Ordinance was introduced for first reading on MONTH DAY, 2019, and adopted at a regular meeting of the City Council of the City of Pomona held on MONTH DAY, 2019 by the following vote:

AYES:
NOES:
ABSENT:

ABSTAIN:

Rosalia A. Butler, MMC
City Clerk

DRAFT

RESOLUTION NO. 2019-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, ESTABLISHING REGULATIONS FOR SIDEWALK VENDING

WHEREAS, Government Code section 51038, as enacted through Senate Bill 946 ("SB 946"), authorizes the City Council to adopt, by ordinance or resolution, rules and regulations governing the time, place, and manner of sidewalk vending in the City;

WHEREAS, the City Council adopted a licensing and regulatory program for sidewalk vending through Ordinance No. ____, which anticipated the need for supplemental rules and regulations in the interests of the public health, safety, and welfare;

WHEREAS, SB 946 authorizes cities to prohibit sidewalk vendors within the immediate vicinity of a certified farmers' market and a swap meet, during permitted hours of operation, and to restrict or prohibit sidewalk vending within the immediate vicinity temporary permitted events, such as Pomona's 2nd Saturday Artwalk, to promote orderly commerce;

WHEREAS, restricting vending within 500 feet of popular concert and sport venues on event days, when pedestrians are likely to crowd the streets, is necessary to protect the public safety, as congested sidewalks encourage pedestrians to step into roadways to keep moving forward and vendors further impeded the safe flow of traffic by encouraging pedestrians to cross mid-block or to congregate to purchase food or merchandise;

WHEREAS, restricting vending near the Fairplex during the Los Angeles County Fair is necessary because the County Fair annually attracts over a million visitors to the City, and, given its scale, results in increased motor traffic and adverse impacts to the residential communities surrounding the Fairplex, which would be aggravated by sidewalk vending;

WHEREAS, regulations are necessary to prevent unsanitary conditions, particularly as respects food handling, and to ensure that vendors take part in keeping vending locations clean;

WHEREAS, restricting vending near school grounds when school is open for student instruction is necessary to protect the safety of children traveling to and from campus and to avoid disrupting classroom instruction and school activities;

WHEREAS, restricting sidewalk vending in residential areas and restricting vendors' use of sound amplifying equipment is necessary to protect residents and visitors from excessive noise and traffic impacts;

WHEREAS, restricting vending is necessary to ensure the safe flow of pedestrian and motor traffic, including ingress and egress from buildings, and to ensure that vendors are not blocking access to driveways, fire hydrants, street furniture, parking areas, or interfering with access for police, fire, and emergency services;

WHEREAS, restricting vending is further necessary to ensure clear paths of travel as required by federal disability access laws, to ensure against congested sidewalks that not only

impede the flow of traffic but expose individuals—particularly children, persons with disabilities, and the elderly—to the dangers of overcrowding;

WHEREAS, the proposed rules and regulations are consistent with SB 946, as they are reasonable and relate to objective health, safety, and welfare concerns, and in addition to promoting the community's health and safety, they ensure the public's use and enjoyment of the City's natural resources and recreational opportunities, including maintaining the integrity of street fairs and other events permitted and encouraged by the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pomona as follows:

SECTION 1. Based on the preceding recitals, which are incorporated herein by reference, the City Council finds that the proposed Rules and Regulations operate in accordance with Ordinance No. ____, to create a regulatory scheme necessary to protect the health, safety, and welfare of the people of Pomona while enabling sidewalk vendors to participate in the City's dynamic economy, consistent with state law.

SECTION 2. The City Council hereby approves and adopts the Rules and Regulations for Sidewalk Vending as presented in "Attachment No. 1."

SECTION 3. CEQA. The City Council has determined this resolution is not a "project" as defined by the California Environmental Quality Act (CEQA) Guidelines Section 15378.

SECTION 4. Severability. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this resolution that can be given effect without the invalid provision or application, and to this end the provisions of this resolution are severable. The City Council hereby declares that it would have adopted this resolution irrespective of the invalidity of any particular portion thereof.

SECTION 5. The City Clerk shall attest and certify to the passage and adoption of this Resolution, and it shall take effect concurrently with the effective date of Ordinance No. ____.

APPROVED AND ADOPTED THIS ____ DAY OF AUGUST 2019.

ATTEST:

CITY OF POMONA:

Rosalía Butler, City Clerk

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APPROVED AS TO FORM:

Interim City Attorney

Attachment No. 1: Rules and Regulations for Sidewalk Vending

CITY OF POMONA

RULES AND REGULATIONS FOR SIDEWALK VENDING

1. Trash and Sanitation. Vendors are responsible for maintaining clean vending sites. To this end, vending carts shall be equipped with trash receptacles large enough to ensure proper disposal of trash generated by vending operations, including food wrappers, containers, and utensils. Vendors may not dispose of such trash in City street or park trash cans intended for use by the general public.
 - (a) A vendor shall pick up all refuse generated by his or her sidewalk vending operations within a 10-foot radius of the vendor's cart before such cart is moved.
 - (b) A sidewalk vendor shall not discharge any liquid (e.g. water, grease, oil, etc.) onto or into city streets, storm drains, catch basins, or sewer facilities.
2. Placement and Clearances.¹ No person shall install, use, or maintain any vending cart which projects onto, into, or over any sidewalk or parkway when such installation, use or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such cart unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, the ingress into or the egress from any residence or place of business, or the use of poles, posts, driveways, traffic signs or signals, hydrants, mailboxes, or other objects permitted at or near said locations. No sidewalk vendor shall obstruct or cause to be obstructed the passage of any sidewalk, street, avenue, alley or any other public place, by causing people to congregate at or near the place where goods, wares, food, or merchandise of any kind is being sold or offered for sale.
 - (a) No cart may be placed or sidewalk vending occur at the following sites:
 - (1) On any public property other than a public sidewalk or pedestrian path as those terms are defined in Pomona City Code section 30-671;
 - (2) Within three (3) feet of the following structures:
 - (A) Street lights
 - (B) Edges of tree wells
 - (C) Parking meters
 - (D) Above ground utility structure
 - (E) Street furniture (e.g., benches and bike racks)

¹ Hat Tip: Section 2 and the diagrams referenced therein are drawn from the General Rules and Regulations for Sidewalk Vending established by the City of Los Angeles Bureau of Street Services.

(F) Newsstands

- (3) Within five (5) feet of fire hydrants;
 - (4) Within two (2) feet of any existing subsurface utility box, valve, or vault;
 - (5) Within 18 inches of the curb or the edge of an existing driveway;
 - (6) At the intersection of two sidewalks bounded by the curb return (see Diagram 1).
 - (7) Within three (3) feet of another vendor (see Diagram 2);
 - (8) At bus stop locations or red curbs (see Diagram 3);
 - (9) Upon or within any roadway, median strips, pedestrian islands, or bikeways;
 - (10) Within twenty (20) feet of an entrance or exit to any building, including, but not limited to, any theater, movie house, house of worship or place of public assembly;
 - (11) Within five-hundred (500) feet of a certified farmers' market or a swap meet during the limited operating hours of these events;
 - (12) Within five-hundred (500) feet of a site designated by a temporary event permit, for the limited duration of the permitted event, including, but not limited to, construction related street or lane closures, street fairs, and filming. (Any notice, business interruption mitigation, or other rights afforded to affected businesses or property owners under the City's temporary event permit shall also be afforded to a sidewalk vendor specifically permitted to operate in the area.)
- (b) No vending carts may be placed directly in front of any building.
- (c) No vending cart may operate at a location if the cart would reduce the pedestrian access route clearance on the path or sidewalk to a width of less than five (5) feet.
- (d) No vending cart may occupy more than one-third ($1/3$) the depth of an existing sidewalk or project more than five (5) feet from the edge of the curb into the sidewalk, whichever distance is smaller. (See Diagram 3.)

3. Restricted Vending Locations.

- (a) No vendor may operate within five-hundred (500) feet of the following locations:

- (1) The Pomona Arts Colony during the hours of the 2nd Saturday Artwalk;
 - (2) Fox Theater from 6:00 p.m. to 6:00 a.m. on event days;
 - (3) Fairplex every day of the Los Angeles County Fair; and
 - (4) 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.
 - (b) Vending in parks is restricted to a park's paved pedestrian paths.
 - (1) No sidewalk vending is permitted on ballfields, grass turf, playground areas, or other unpaved trails or paths.
 - (2) A cart may not be located on a path if the cart would reduce the pedestrian access route clearance thereon to a width of less than five (5) feet.
 - (3) Stationary sidewalk vendors may not operate in a park if the park operator has entered an exclusive concessions agreement with a third party.
 - (4) All vendors must cease operating 20 minutes prior to park closure.
 - (c) Stationary sidewalk vendors may not operate in any residential zone. Stationary sidewalk vendors may only operate at the location(s) designated in their vending permit and only during the times set forth therein.
 - (d) Roaming sidewalk vendors may not operate in residential zones between the hours of 8:00 p.m. and 8:00 a.m. daily.
4. Operating Requirements. A sidewalk vendor must operate in compliance with Article X, Chapter 30 of the Pomona City Code and these Rules and Regulations at all times.
- (a) All vendors must be in possession of a valid vendor permit at all times during vending operations.
 - (b) All vending carts must display a valid business license number at all times during vending operations.
 - (c) Vending activity may not block the entrances to any buildings, driveways, or vehicle parking spaces.
 - (d) Carts and other equipment used in connection with sidewalk vending may not be stored or left unattended in public spaces or in any portion of the public right-of-way. (Equipment or objects left in public spaces or in the public right of-way overnight, or outside the hours of permitted vending operations, will be considered discarded and may be seized or disposed of by the city.)
 - (e) Signs, tables, chairs, shade structure, fences, or other furnishings not approved for

use in a sidewalk vending license may not be used in vending operations.

- (f) Vendors may not use any horns, music, lights, visual media, or any sound amplifying device unless expressly approved in the vending license.
- (g) Sidewalk vendors are not permitted to sell or offer for sale lottery tickets, alcohol, cannabis, adult oriented material, or tobacco or electronic cigarette products.
- (h) Sidewalk vending of services, including rental services, is prohibited.
- (i) Vendors may not attach or use any water lines, electrical lines, or gas lines during vending operations.
- (j) Vendors may not affix, lean, or touch any sidewalk vending equipment to, on, or against any street fixture or structure, including, but not limited to, utility posts, bus shelters, public trash cans, parking meters, or street signs.
- (k) Carts and vending activity may not physically alter or otherwise damage the underlying sidewalk.
- (l) Vendors must maintain adequate insurance to protect the City from any liability associated with sidewalk vending as determined by the City's Risk Manager, or the Risk Manager's designee, and specified in the license and permit application.
- (m) Roaming vendors must keep their operations moving except when completing a transaction and may not operate on any city block for more than one (1) hour in any four (4) hour period.

5. License Requirements. Applicants for a sidewalk vending license shall complete a City application that includes the following:

- (A) The name, current mailing address, and telephone number of the applicant cart owner;
- (B) If the applicant is an agent of an individual, company, partnership, or corporation, the name and business address of the principal;
- (C) Proof of the applicant's personal identification. Proof is satisfied if the applicant presents a valid California driver's license or identification number, an individual taxpayer identification number, or any other government-issued identification card. Such information is not a public record and will remain confidential as required by Government Code section 51038(c)(4);
- (D) The number of carts an applicant will operate within the City under the license;
- (E) A description of the food or merchandise to be offered for sale;

- (F) Affirmation that any food carts will be operated by a vendor who has been issued a food handler's card;
- (G) Whether carts will be operated by a stationary sidewalk vendor or a roaming sidewalk vendor;
- (H) A general description of the location(s) in which the applicant proposes to operate, including vending routes along or in proximity to any major cross streets;
- (I) The day(s) and hours of operation at such location(s);
- (J) An agreement by the applicant to defend, indemnify, and hold harmless the City, its officers, and employees from and against any and all claims, demands, damages, actions, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to applicant's sidewalk vending activities;
- (K) An acknowledgement that the use of public property is at a sidewalk vendor's own risk as the City does not ensure public property is safe for or conducive to sidewalk vending;
- (L) An acknowledgement that the applicant will obtain and maintain for the duration of any license issued by the City, any insurance of such types and in such amounts as required by the City's Risk Manager or his or her designee;
- (M) The applicant's certification that, to his or her knowledge and belief, the information contained in the application is true; and
- (N) Any other relevant information required by the City Manager.

6. Permit Requirements. Applicants for a vendor permit shall complete a City application that includes the following:

- (A) The name, current mailing address, and telephone number of the applicant vendor;
- (B) If the applicant is an agent of an individual, company, partnership, or corporation, the name and business address of the principal;
- (C) Proof of the applicant's personal identification. Proof is satisfied if the applicant presents a valid California driver's license or identification number, an individual taxpayer identification number, or any other government-issued identification card. Such information is not a public record and will remain confidential as required by Government Code section 51038(c)(4);
- (D) A description of the food or merchandise to be offered for sale;

- (E) A copy of the food handler's card issued to any sidewalk vendor of food;
- (F) Whether the vendor will be stationary or roaming;
- (G) A general description of the location(s) in which the applicant proposes to operate, including vending routes along or in proximity to any major cross streets;
- (H) The day(s) and hours of operation at such location(s);
- (I) An agreement by the applicant to defend, indemnify, and hold harmless the City, its officers, and employees from and against any and all claims, demands, damages, actions, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to applicant's sidewalk vending activities;
- (J) An acknowledgement that the use of public property is at the sidewalk vendor's own risk as the City does not ensure public property is safe for or conducive to sidewalk vending;
- (K) An acknowledgement that the sidewalk vendor will obtain and maintain for the duration of any permit issued by the City, any insurance of such types and in such amounts as required by the City's Risk Manager or his or her designee;
- (L) The applicant's certification that, to his or her knowledge and belief, the information contained in the application is true; and
- (M) Any other relevant information required by the City Manager.

7. Definitions. The following definitions shall apply to these rules and regulations:

Cart means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending.

Cart owner means a person who owns or controls the operations of one or more carts and includes a self-employed, independent sidewalk vendor.

Certified farmers' market means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter, or any successor chapter.

Citation means an Administrative Citation issued pursuant to section 2.1184 of Article X, Chapter 2 of this code.

City means the City of Pomona.

City Manager means the City Manager or his or her designee.

County means the County of Los Angeles.

Curb return means the curved section of a curb located at a corner of an intersection, connecting a curb on one street to another curb on the intersecting street. A curb return starts at the point where the curb begins to turn toward the direction of the intersecting street and ends at the point where it meets the curb on the intersecting street.

Food means any type of edible substance or beverage.

Merchandise means any good that is not food or an item for rent.

Park means any public park or recreational facility, including the Pomona City Civic Plaza, under the jurisdiction of the City Parks and Recreation Commission.

Pedestrian path means any paved path or walkway owned or controlled by the City and intended specifically for pedestrian travel.

Roaming sidewalk vendor means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

Rules and Regulations means detailed requirements respecting sidewalk vending designed to supplement this Article.

Sidewalk means a public sidewalk as defined in Sec. 1-2 of this code.

Sidewalk vendor or *vendor* means a person who sells or offers for sale food or merchandise from a cart or from one's person, upon a public sidewalk or other pedestrian path.

Sidewalk vending means commercial activity that qualifies a person as a sidewalk vendor.

Stationary sidewalk vendor means a sidewalk vendor who operates from a fixed location.

Swap meet means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article, or any successor article.

Temporary event permit means a permit issued by the City for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or a permit for gatherings in public parks issued under Sec. 38-76, for purposes including, but not limited to, filming, parades, or outdoor concerts.

Diagram 1

**Beginning of curb return" BCR means the area that includes the intersection of two sidewalks bounded by the adjoining corner.

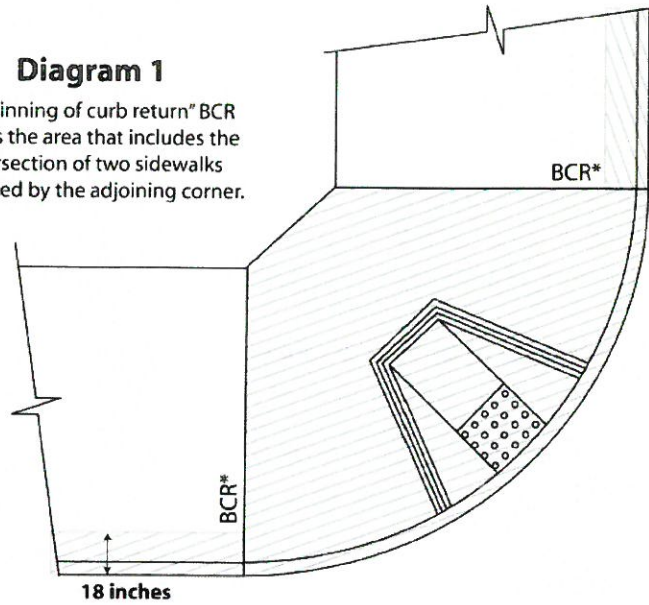


Diagram 2

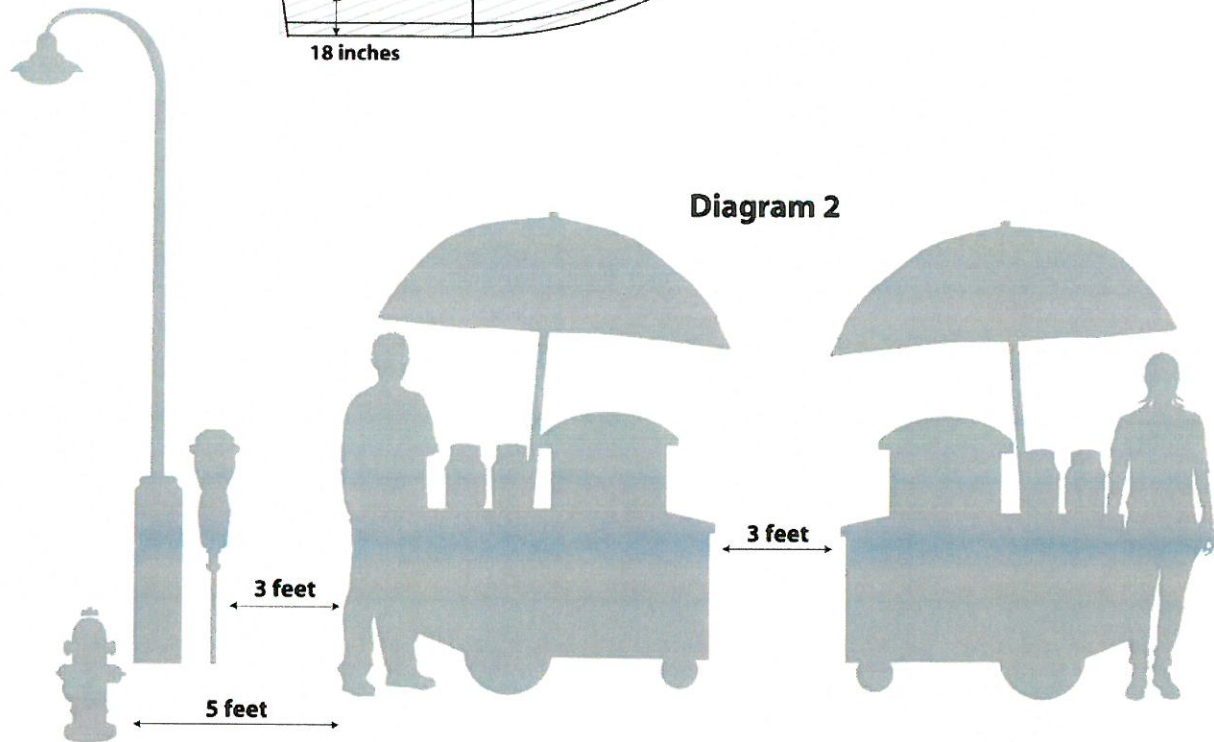
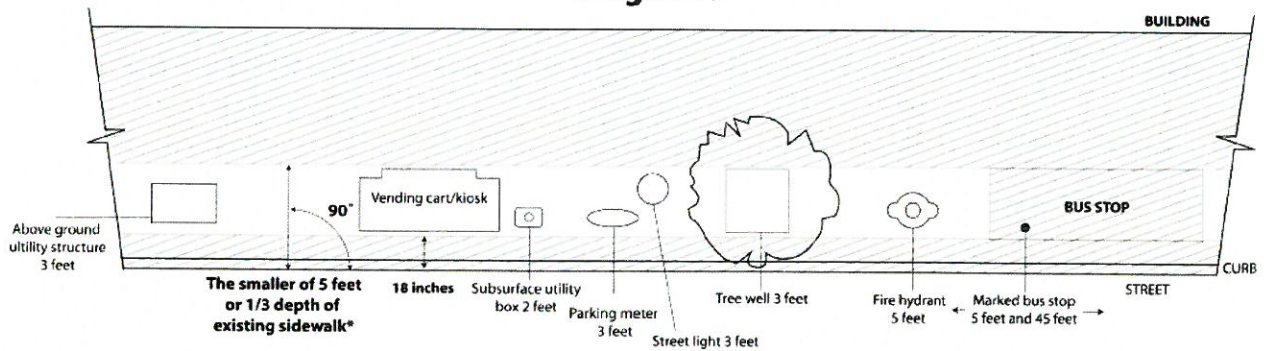


Diagram 3



* Examples: 1/3 of depth of 9' wide sidewalk vendor space would be 3', 6' wide sidewalk vendor space would be 2'.