



CITY OF POMONA

COUNCIL REPORT

October 7, 2019

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Mark Gluba, Deputy City Manager

**SUBJECT: INTRODUCTION AND FIRST READING OF ORDINANCE NO. 4270
PERTAINING TO SIDEWALK VENDING AND ADOPTION OF
RESOLUTION NO. 2019-162, ESTABLISHING RULES AND
REGULATIONS FOR SIDEWALK VENDING IN ACCORDANCE
WITH THE DRAFT ORDINANCE AND SENATE BILL 946**

RECOMMENDATION:

It is recommended that the City Council take the following actions:

- 1) Introduce for first reading Ordinance No. 4270, amending Article X, Chapter 30 of the Pomona City Code in its entirety to create a sidewalk vending regulatory program, and;
- 2) Adopt Resolution No. 2019-162, establishing regulations for sidewalk vending and finding the same exempt from CEQA.

EXECUTIVE SUMMARY:

The proposed ordinance creates a sidewalk vending regulatory program that will replace the City's existing ban on foot and pushcart vendors. Whereas the existing ban does not comply with state law, and is therefore unenforceable, the proposed ordinance presents enforceable regulations. The ordinance also directs the City Manager's office to develop rules and regulations for sidewalk vendors which will be adopted by resolution of the City Council. At its September 9, 2019 meeting, the Council directed staff on specific components of the City's regulatory policy. That policy direction has been incorporated in the proposed resolution.

FISCAL IMPACT: Minimal impact to the General Fund is anticipated as vendors' obtain the required Business License necessary for Sidewalk Vending. Costs of Code Enforcement actions, while potentially significant, will be borne within the existing budget of the Code Compliance Division.

PREVIOUS RELATED ACTION:

Since at least November 2018, city staff, the Mayor, and Councilmembers have met with members of the community on multiple occasions to discuss the regulation of sidewalk vending.

The Council has also held a study session and informational hearings on the issue at three separate public meetings (in December 2018, August 2019, and September 2019). At its last hearing on the matter, the Council provided staff with direction on outstanding points of policy in the draft regulations, which have now been finalized for adoption.

DISCUSSION:

Effective January 1, 2019, local governments 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 state law, a city may not cite, fine, or prosecute a person for sidewalk vending.

Summary of Proposed Ordinance and Resolution

The draft ordinance (**Attachment 1**) would amend the Pomona City Code to repeal the existing ban on sidewalk vending and replace it with a new regulatory program that substantially complies with state law. While the ordinance establishes the structural provisions of the City's sidewalk vending program, the proposed resolution (**Attachment 2**) sets forth the detailed rules and regulations critical to enforcement. The regulations are adopted by resolution in order to facilitate any future amendments, which may take effect immediately upon adoption by the Council.

Licensing

As proposed, the regulation of sidewalk vending in Pomona will be administered by the Finance Department and Code Enforcement through a licensing program. All owners of vending carts will be required to obtain a business license. Vendors shall display their proof of business license and any applicable permits at all times during operations in order to facilitate code enforcement.

All applicants for a business license will be issued an informational handout summarizing the operating requirements set forth in the Rules and Regulations. Licensees will be required to sign an acknowledgement that they have received and intend to comply with these requirements. Staff will not engage in cart inspections prior to issuing licenses. Rather, Code Enforcement will be responsive, whereby enforcement officers will investigate complaints of bad actors and issue citations for violations of the Rules and Regulations.

Enforcement

Under Senate Bill 946 (SB 946), sidewalk vending may no longer be subject to criminal penalties. This means that even with a legally enforceable ordinance, a city's enforcement authority will be limited to issuing citations for administrative fines. State law provides that fines may start at \$250 for vending without a required business license or associated permits and at \$100 for a business license or permit violation. However, all fines are subject to ability-to-pay determinations and must be reduced to 20% of the total fine amount for persons with monthly

incomes below specified poverty guidelines. Staff has only adopted the lower schedule of permitted fines under state law in the proposed ordinance:

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 business license for the remainder of the licensee's term upon the fourth or subsequent violations.

A single schedule of fines would simplify (and reduce the costs of) code enforcement.

Additional Policy Direction from Council

According to the policy direction staff received from Council at its September 9, 2019 meeting, the draft Rules and Regulations (R&R) have been revised as follows:

- **Health Permits (required)** All sidewalk vendors of food must obtain a mobile food facility permit from the Los Angeles County Department of Public Health. (R&R, (4)(b).)
- **Cart Size (6'x3')** Carts may not exceed a total length of six (6) feet and a total depth of three (3) feet, including all wheels, axles, and other vending appurtenances. (R&R, (4)(m).)
- **Liability Insurance (required)** Vendors must obtain comprehensive general liability insurance with minimum policy limits of one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate against any injury, death, loss, or damage resulting from wrongful or negligent acts or omissions by the permittee, with an endorsement naming the City as an additional insured. (R&R, (5)(L).)
- **Restricted Locations**_ No vendor may operate within two-hundred (200) feet of the following:
 - A certified farmers' market or a swap meet during the limited operating hours of these events. (R&R, (2)(a)(11).)
 - 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, filming, and the Pomona Arts Colony during the hours of the 2nd Saturday Artwalk. (R&R, (2)(a)(12).)
 - Fox Theater – a period beginning one hour before and ending one hour after any scheduled event. (R&R, (3)(a)(1).)
 - Fairplex every day of the Los Angeles County Fair. (R&R, (3)(a)(2).)
 - Any public or private kindergarten, elementary, or secondary (K-12) school from 6:00 a.m. to 4:00 p.m. on days that school is open to students. (R&R, (3)(a)(3).)

The restricted locations are based on concerns to avoid interfering with temporary permitted events (as authorized under SB 946) and on concerns for sidewalk access and safety at venues that experience overcrowding.

200 feet restricted radius

Staff has scaled back the restricted vending radius surrounding each of the specified events and locations from a distance of 500 feet to 200 feet. This reduction reflects an effort to accommodate vendors who seek to comply with local regulations and to work with the City to minimize adverse impacts on permitted events and public safety. As Pomona has historically banned sidewalk vending, staff cannot guarantee that a buffer of 200 feet will suffice to minimize public impacts. However, vendors' good faith effort to abide by the rules and consider the concerns of the community should allow for fewer restrictions on the activity. The first year of the City's regulatory program will equip staff with more data on the issue, and staff will continue to monitor all sidewalk vending within the City during this time and propose additional regulations as necessary.

School restrictions

In response to Councilmembers' input on the times at which schools are open to students, staff has also reduced the restrictions on vending near schools, imposing limitations on vending until 4:00 p.m. as opposed to 6:00 p.m.

Fox Theater

The Council received public comment at its September 9, 2019 meeting suggesting that the restrictions on vending around the Fox were in violation of SB 946, specifically, section 51038(c)(1) of the California Government Code. The City Attorney's office has affirmed that Section 51038(c) authorizes local governments to adopt time, place, and manner requirements for sidewalk vending that are directly related to objective health, safety, or welfare concerns. Subparagraph (c)(1) of the section gives one example of such permitted regulation: "Limitations on hours of operation that are not unduly restrictive."

The restriction on sidewalk vending near the Fox Theater is not a restriction on vendors' general hours of operations, but rather a location-based restriction. Staff has found that the theater is located near a high traffic corridor (Garey Avenue), that surrounding sidewalks are relatively narrow, and that throngs of people fill the venue and the surrounding sidewalks before and after scheduled events, and may be forced to simultaneously evacuate the building in the case of emergency. Allowing additional vendors in the public right-of-way around the theater at time, when streets are already overcrowded presents a public safety issue.

However, in the spirit of collaborating with the vendor community to promote safe sidewalk vending, staff has tailored the scope of the restriction even further to capture only those times when streets around the Fox are most likely to be impacted. The

restricted vending radius has also been reduced from 500 feet to 200 feet, as applied to all of the City's location restrictions.

Community Outreach

Should the Council adopt the proposed ordinance and resolution, staff will use the time between the first reading of the ordinance and its effective date (adoption at second reading plus 30 days) to begin educational outreach among sidewalk vendors currently operating in the City. The aim will be to inform the vendor community of the pending regulations and the end of the current moratorium on code enforcement. At the end of the outreach period (and the start of the City's regulatory program), Code Enforcement staff will begin issuing warnings and citations to vendors in violation of the Ordinance and Rules and Regulations.

ATTACHMENTS:

Attachment No. 1 – Proposed Ordinance No. 4270

Attachment No. 2 – Proposed Resolution No. 2019-162, establishing regulations for sidewalk vending and finding the same exempt from CEQA