

Date of Hearing: June 20, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 946 (Lara) – As Amended June 11, 2018

SENATE VOTE: 22-10

SUBJECT: Sidewalk vendors.

SUMMARY: Decriminalizes sidewalk vending and establishes various requirements for local regulation of sidewalk vendors. Specifically, **this bill:**

- 1) Prohibits a local authority from regulating sidewalk vendors, except in accordance with this bill.
- 2) Provides that nothing in this bill shall be construed to affect the applicability of the California Retail Food Code to a sidewalk vendor who sells food.
- 3) Provides that nothing in this bill shall be constructed to require a local authority to adopt a new program to regulate sidewalk vendors, if the local authority has established an existing program that substantially complies with the requirements of this bill.
- 4) Declares that a local authority may adopt a program to regulate sidewalk vendors in compliance with this bill.
- 5) Requires a local authority's sidewalk vending program to comply with all of the following standards:
 - a) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns;
 - b) A local authority shall not 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 the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire;
 - c) A local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority, if the requirements are any of the following:
 - i) Directly related to objective health, safety, or welfare concerns;
 - ii) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; and,

- iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park;
 - d) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise;
 - e) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns;
 - f) A local authority may prohibit stationary sidewalk vendors in areas where commercial uses are not a permitted use, but shall not prohibit roaming sidewalk vendors; and,
 - g) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority, unless the restriction is directly related to objective health, safety, or welfare concerns.
- 6) Allows a local authority, by ordinance or resolution to, adopt additional requirements regulating the time and manner (but not the place) of sidewalk vending, if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:
- a) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street;
 - b) Requirements to maintain sanitary conditions;
 - c) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990, as specified, and other disability access standards;
 - d) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts 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 if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed, except as required to administer the permit or licensure program or comply with a state law or state or federal court order;
 - e) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration (DTFA) seller's permit;
 - f) Requiring additional licenses from other state or local agencies to the extent required by law;

- g) Requiring compliance with other generally applicable laws; and,
- h) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:
 - i) The name and address of the sidewalk vendor;
 - ii) A description of the merchandise offered for sale or exchange;
 - iii) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true;
 - iv) The California seller's permit number (DTFA sales tax number), if any, of the sidewalk vendor; and,
 - v) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.
- 7) Allows a local authority to do both of the following:
 - a) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with specified existing law and regulations governing the direct marketing of agricultural products. A "swap meet" means a location operated in accordance with specified existing law governing swap meets, flea markets, and open air markets; and,
 - b) Restrict or prohibit sidewalk vendors within the immediate vicinity of any part of the sidewalk that is subject to a separate temporary sidewalk use permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority's separate temporary sidewalk use permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. A separate temporary sidewalk use permit shall include, but not be limited to, a temporary permit for filming, parades, or outdoor concerts. A prohibition of sidewalk vendors shall only be effective for the limited duration of the separate temporary sidewalk use permit.
- 8) States that perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern for the purposes of this bill.
- 9) Declares that a violation of a local authority's sidewalk vending program that complies with this bill is punishable only by the following:
 - a) An administrative fine not exceeding \$100 for a first violation;
 - b) An administrative fine not exceeding \$200 for a second violation within one year of the first violation; and,

- c) An administrative fine not exceeding \$500 for each additional violation within one year of the first violation.
- 10) Allows a local authority to rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.
- 11) Requires the proceeds of an administrative fine to be deposited in the treasury of the local authority.
- 12) States that a failure to pay an administrative fine shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in 9) and 10), above, shall not be assessed.
- 13) Prohibits a violation of a local authority's sidewalk vending program that complies with this bill, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, from being punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest, except when permitted under law. This shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.
- 14) Prohibits a local authority that has not adopted rules or regulations by ordinance or resolution that comply with this bill from citing, fining, or prosecuting a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in this bill.
- 15) Requires, when assessing an administrative fine, the adjudicator to take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The 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.
- 16) Requires a local authority to accept, in full satisfaction, 20% of the administrative fine imposed pursuant to this bill, if a person meets the criteria in specified existing law that waives court costs due to a person's financial condition.
- 17) Permits a local authority to allow a person to complete community service in lieu of paying the total administrative fine, waive the administrative fine, or offer an alternative disposition.
- 18) Allows a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under this bill had it been in effect at the time of the offense, to petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case, as specified.

19) Provides the following definitions:

- a) "Sidewalk vendor" means 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, upon a public sidewalk or other pedestrian path;
- b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction;
- c) "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location; and,
- d) "Local authority" means a chartered or general law city, county, or city and county.

20) Finds and declares that this bill imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest: the Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this bill.

21) Finds and declares all of the following:

- a) Sidewalk vending provides important entrepreneurship and economic development opportunities to immigrant and low-income communities;
- b) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise;
- c) Sidewalk vending contributes to a safe and dynamic public space;
- d) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending;
- e) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations;
- f) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover,

California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk; and,

- g) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

EXISTING LAW:

- 1) Allows a city or county to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws, known as the police power of cities.
- 2) Allows local governments to require businesses operating in their jurisdictions to obtain a license and impose related licensing fees.
- 3) Grants cities and counties the ability to create ordinances regulating or banning sidewalk vending.

FISCAL EFFECT: None

COMMENTS:

1) **Background.**

- a) **Sidewalk Vendors.** Sidewalk vendors are individuals that sell goods on streets and sidewalks from carts and other non-motorized conveyances. These vendors engage in business in many cities throughout the state, where they sell food items and other merchandise. Some sidewalk vendors are stationary, while others move from one location to another. Although there is no statewide count, there are an estimated 50,000 sidewalk vendors in the City of Los Angeles. Cities and counties throughout the state have ordinances regulating or banning sidewalk vending. These ordinances impose varying regulations on sidewalk vendors, including, restricting where they can operate, limiting the hours they may operate, requiring them to get permission to operate from nearby businesses, establishing fines and criminal penalties for violations of sidewalk vending ordinances, specifying the maximum number of sidewalk vendor permits issued in the local jurisdiction or within a single block at any given time, and imposing restrictions on stationary vending.
- b) **Existing Street Vending Ordinances.** Some local governments, including the City of Los Angeles, have taken steps to decriminalize sidewalk vending. In early 2017, the City of Los Angeles enacted an ordinance that decriminalized street vending, subjecting vendors only to administrative citations for violations. However, the ordinance did not establish a full regulatory framework. The Los Angeles City Council is currently debating whether certain neighborhoods should be off-limits to sidewalk vendors, whether limits of two street vendors per block is reasonable, and whether sidewalk vendors must receive the permission of nearby brick-and-mortar businesses, among other issues.

- c) **Criminal Convictions and Immigration Status.** On January 25, 2017, President Trump issued Executive Order 13767 revising the ICE “criminal alien policy,” which establishes rules under which unauthorized immigrants are potentially removable because they have been convicted of a crime. This revision significantly broadened the number of immigrants who would be considered a priority for deportation. The executive order prioritizes deportation of individuals who have committed acts that could have been charged as a crime, regardless of whether their actual conviction was criminal. It also prioritizes for deportation an individual who has been charged with a criminal act, but for whom the charge has not been resolved.

Since many cities and counties make violation of their sidewalk vending ordinances a criminal offense, such as a misdemeanor or infraction, sidewalk vendors have been subject to deportation. For example, in October 2017, ICE detained a sidewalk vendor in the City of Rancho Cucamonga after the vendor had been cited for a fourth violation of Rancho Cucamonga’s municipal codes, which is a misdemeanor.

- 2) **Bill Summary.** This bill establishes requirements for local regulation of sidewalk vendors, 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 pedestrian path. The bill also specifies a schedule of fines and decriminalizes street vending by modifying the penalties that apply to current and past violations of sidewalk vending ordinances.

This bill would prohibit a local authority (counties and cities, including charter cities) from regulating sidewalk vendors, except in accordance with the provisions of the bill. The major provisions are:

- a) Locals cannot require a sidewalk vendor to operate within specific parts of the public right-of-way and neighborhoods, except where a restriction is related to objective health, safety, or welfare concerns. They also cannot limit the number of vendors, unless the limitation is related to objective health, safety, or welfare concerns;
- b) Locals cannot make sidewalk vendors get approval from a non-governmental entity (i.e. a brick-and-mortar business) before they can sell food and/or merchandise; and,
- c) Local authorities may adopt additional requirements regulating the time and manner (but not the place) of sidewalk vending, such as operating hours, sanitary conditions, business licenses (with restrictions surrounding social security numbers), seller’s permit, and so forth.

The bill additionally decriminalizes street vending by providing that:

- a) A violation of a local authority's sidewalk vending program that complies with the bill is punishable only by fines and shall not be subject to infraction or misdemeanor penalties;
- b) Pending criminal prosecutions cannot proceed as infractions or misdemeanors and prosecutions that have not reached final judgement shall be dismissed; and,

- c) Anyone with a conviction against them for sidewalk vending can petition for dismissal of the sentence, fine, or conviction.

This bill is sponsored by the author.

- 3) **Author's Statement.** According to the author, "California's sidewalk vendors are working hard to feed their families and build their businesses, but they are trapped in a legal vacuum, unable to seek a valid business permit and exposed to criminal prosecution. California needs to start treating sidewalk vendors like any small business owner working to make it in our state – not putting more obstacles in their path. SB 946 allows local governments to regulate vendors if they first create a permit process. With Immigration and Customs Enforcement (ICE) threatening to deport any undocumented immigrant, sidewalk vendors are more vulnerable than ever. Last year ICE agents detained a sidewalk vendor and mother of four in Rancho Cucamonga after she was arrested for selling corn. This bill ends criminal penalties for sidewalk vendors statewide and puts them on a path to having a safe and legal business."
- 4) **Arguments in Support.** The American Civil Liberties Union of California (ACLU), in support, writes, "By encouraging local jurisdictions to support and properly regulate sidewalk vending, SB 946 will help protect California's low-income immigrants and workers, promote safe and regulated vending, and create new opportunity for entrepreneurship and economic mobility throughout the state. Tens of thousands of Californians work as sidewalk vendors. For many, including immigrants excluded from the formal economy, sidewalk vending offers a chance to start and grow a business while improving local economies. Studies have demonstrated that sidewalk vending generates millions in local and state tax revenue as vendors buy supplies from local businesses and circulate money within their communities. In many food desert communities, fruit, and vegetable vendors are the only available source of fresh produce. Vendors activate commercial corridors, increase pedestrian traffic, and provide eyes on the street to make neighborhoods safer and more dynamic."
- 5) **Arguments in Opposition.** The League of California Cities, in opposition, writes, "SB 946 still goes too far by restricting a local jurisdiction's ability to regulate time, place, manner, and total number of permitted sidewalk vendors to directly related objective health, safety, and welfare concerns. It is not uncommon for a jurisdiction to regulate commercial activity based on factors other than health, safety, and welfare concerns. For example, many jurisdictions appropriately designate certain areas of the community for particular uses such as medical facilities, office buildings, restaurants, bars, and nightclubs. Under the provisions of SB 946, sidewalk vendors would be regulated differently than other entrepreneurs in the community. SB 946 as presently drafted strictly limits penalties for violating a local sidewalk vending ordinance to administrative fines that range from \$100 for the first violation to \$500 for three or more violations within one year, and permit revocation upon the fourth violation. Jurisdictions are prohibited from imposing infraction or misdemeanor penalties regardless of the number of violations or operating with a rescinded permit. Administrative fines alone are not adequate enough to properly deter unlawful activity. At some point, jurisdictions need the ability to impose stronger penalties for those that continue to willfully violate a sidewalk vending ordinance."

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU of California
American Civil Liberties Union of California
A New Way of Life Re-Entry Project
Bet Tzedek Legal Services
California Alliance of Farmers' Markets (as amended)
California Food Policy Advocates
California Immigrant Policy Center (as proposed to be amended)
California Street Vendor Campaign (as amended)
Courage Campaign
Economic Roundtable
Esperanza Community Housing
Food Chain Workers Alliance (as proposed to be amended)
Inner City Struggle
Institute for Justice
Investing in Place
Koreatown Immigrant Workers Alliance
LA Forward
Leadership for Urban Renewal Network (LURN)
Legal Aid at Work
Legacy LA
Legal Services for Prisoners with Children
Little Tokyo Service Center
Los Angeles Alliance for a New Economy (LAANE)
Los Angeles County Federation of Labor
Los Angeles Food Policy Council
Los Angeles Walks
National Lawyers Guild Los Angeles
Oakland Food Policy Council (as proposed to be amended)
Opportunity Fund (as proposed to be amended)
PolicyLink
Promesa Boyle Heights
Public Counsel
Sacramento Food Policy Council (as proposed to be amended)
Self Help Graphics & Art
Social Justice Learning Institute
Strategic Actions for a Just Economy (SAJE)
Sustainable Economies Law Center
The Public Health Justice Collective (as proposed to be amended)
UCLA Center for Labor Research and Education
UCLA School of Law Criminal Defense Clinic
Venice Community Housing
Individual academic and community leaders (78)

Opposition

California Association of Winegrape Growers
California Downtown Association
California Park & Recreation Society (unless amended)
California State Association of Counties
Cities of Beverly Hills, San Marcos, and Santa Clarita
League of California Cities (unless amended)
Urban Counties of California

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