

Date of Hearing: May 1, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2791 (Wilson) – As Introduced February 15, 2024

SUBJECT: Sidewalk vendors.

SUMMARY: Allows cities and counties to prohibit sidewalk vendors in areas located within the immediate vicinity of an annual fair. Specifically, **this bill:**

- 1) Allows cities and counties to prohibit sidewalk vendors in areas located within the immediate vicinity of an annual fair.
- 2) Defines “annual fair” to an annual fair operated by a district agricultural association, county fair, or citrus fruit fair, as described in Division 3 (commencing with Section 3001) of the Food and Agriculture Code.
- 3) Makes technical and conforming changes.

EXISTING LAW:

- 1) Allows, under the California Constitution, 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.” This is commonly referred to as the police power of cities and counties. (Cal. Const., Art. XI, § 7)
- 2) Prohibits local authorities from regulating sidewalk vendors, unless they adopt a regulatory framework consistent with the following provisions [Government Code (GOV) §§ 51036 – 51039]:
 - a) Prohibits a city or county from requiring sidewalk vendors to operate within specific parts of the public right-of-way, except where that restriction is directly related to objective health, safety, or welfare concerns. Local authorities can neither restrict the overall number of sidewalk vendors, nor require sidewalk vendors to operate only in a designated area, unless these restrictions are directly related to health, safety, or welfare concerns.
 - b) Allows cities and counties to adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, as specified.
 - c) Prohibits criminal penalties for violations of sidewalk vending ordinances and instead establishes an administrative fine structure.
 - d) Allows a local authority with a compliant sidewalk vending program to impose an administrative penalty of \$100 for a first violation of the local sidewalk vending ordinance, \$200 for a second violation within one year of the first violation, and \$300 for each additional violation within one year of the first violation. Administrative penalties for vending without a permit follow a similar structure and are \$250, \$500, and \$1,000, respectively.

- e) Requires an adjudicator of these fines to take into account the ability of the violator to pay the fine and allows a violator to require an ability to pay determination at any point. A local authority must accept 20% of the fine in full satisfaction if the violator earns less than 125% of the federal poverty line.
- f) Prohibits any local authorities from imposing any additional financial penalties, and prohibits penalties for violations of sidewalk vending from being subject to arrest, except where permitted under law.
- g) Allows cities and counties to prohibit sidewalk vendors from operating near special events, and to prohibit stationary vendors (but not roaming vendors) in certain circumstances in parks and exclusively residential zones.
- h) Allows cities and counties to 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, as specified

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill allows cities and counties to prohibit sidewalk vendors in areas located within the immediate vicinity of an annual fair operated by a district agricultural association, county fair, or citrus fruit fair, as described in the Food and Agriculture Code.

This bill is sponsored by the Western Fairs Association.

According to the author, "California's fairs play a vital role in every community throughout the state. Our state's fairs host ten million visitors annually and are designated staging areas for disaster response and fire evacuations. The state has required fairs to be financially self-sufficient and as a result, it is imperative that fairs maximize the revenues of each of their events in order to continue to meet their obligations to their community.

"The annual fair is most attended event at each district agricultural association and county fair. Annual fairs take months of planning and vendors are carefully regulated. In the past two years, California fairs have seen an increase in sidewalk vending in the immediate vicinity during the time of their annual fairs. This has caused increased traffic in pedestrian pick-up and drop off zones and has led to discontent between fairs and their vendors. AB 2791 will allow local governments the option of prohibiting street vending during their annual fairs."

- 2) **Background.** The California Constitution 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." This is commonly referred to as the police power of cities and counties. It is from this fundamental power that local governments derive their authority to regulate land uses through planning, zoning ordinances, and use permits. Local agencies also use this police power to abate nuisances and protect public health, safety and welfare.

As an extension of the police power, state law lets local governments require businesses operating in their jurisdictions to obtain a license and impose related licensing fees. Local governments license businesses for lots of reasons: to identify individuals operating businesses in their jurisdictions; to ensure compliance with other local laws; to facilitate contact in case a problem arises; and, to raise money to support public services that support those businesses.

Cities and counties subject businesses to a wide variety of regulations to preserve the public health and welfare, such as limitations on their hours of operation, restrictions on where various types of businesses can be located within a jurisdiction, and regulations on the type of merchandise that can be sold. These regulations are typically intended to address concerns of local citizens about the impact of a business.

- 3) **Sidewalk Vendors and Immigrant Communities.** Sidewalk vendors are individuals that sell goods on streets and sidewalks from carts and other non-motorized conveyances. Some sidewalk vendors are stationary, while others move from one location to another. Although there is no statewide count, there are an estimated 10,000 sidewalk vendors selling food in the City of Los Angeles alone.

According to “Racial Justice for Street Vendors,” an article published by the California Law Review in June of 2021, “Street vending has long held economic and social significance for immigrant communities. For one thing, street vending and other public markets have traditionally filled the basic consumption needs of poor workers, demonstrating how immigrants support the informal economy as both producers and consumers. As a form of work, street vending is defined by relatively low barriers of entry at least when compared to selling goods and services within brick-and-mortar settings.

“In Southern California, street vending has long been tied to migrant communities, which has, unsurprisingly, sparked strong, divergent reactions among the public. During the late nineteenth century, Chinese migrants sold produce in the streets of Los Angeles. During this same period of time – a period marked by anti-Chinese sentiment in federal immigration policy – Los Angeleno lawmakers began creating and defining public space in narrow terms that privileged the interests of pedestrians and disregarded the interests of street vendors. Local officials began increasing licensing fees only for vegetable peddlers, who were disproportionately Chinese. Fees for fruit peddlers, who were mostly white, did not increase. The Chinese peddlers went on strike and began challenging these ordinances in court, often successfully.

“This battle over street vendor rights – and the social meaning of street vending – presaged a similar fight that would unfold more than a century later in East Los Angeles. As gentrification and exclusionary zoning laws began displacing poor residents of communities like Boyle Heights – a neighborhood with a significant Latinx residential population – advocates and community members began coalescing around street vendor rights as an attempt to empower themselves in the face of pending displacement.

“As gentrification efforts gained momentum in urban communities of color across the country, lawmakers and brick-and-mortar business owners pressured police to target those selling food in public spaces. Police harassment of female street vendors in that community

led to the LA Street Vendor Campaign that pressured lawmakers for legislative reform, first in Los Angeles and then in Sacramento...

“In particular, immigrant rights advocates pointed to the disproportionate dangers posed by low-level or misdemeanor policing, a form of law enforcement commonly understood to lead to only minor outcomes. The reality has been that even minor contact with the criminal justice system can lead to an array of immigration consequences including removal from the United States. In 2018, California Governor Jerry Brown signed into law the Safe Sidewalk Vending Act (SSVA). This law decriminalizes sidewalk vending. Lawmakers presented this law as an important effort to protect unauthorized immigrants who work in the informal economy.

“The SSVA sought to dial down the punitive aspects of the law governing street vending. In place of criminal penalties, the new law imposes a set of escalating fines. Crucially, the law instructs regulators to take into account a person’s ‘ability to pay’ when assessing fines and prohibits prosecutors from using criminal infractions or misdemeanors to punish those who fail to pay these fines. In other contexts, the failure to pay fees has had a ‘snowballing’ effect, in which minor infractions can quickly balloon into serious violations with criminal penalties. Defanging both the substantive grounds and the enforcement mechanisms helped to clear away any brush from adjacent areas of law that might transform an administrative or civil penalty into a criminal one.”

- 4) **State and Local Regulation of Sidewalk Vending.** Until 2019, cities and counties were able to regulate or ban sidewalk vending as they saw fit. Due to concerns that criminal citations for sidewalk vendors could enable deportation by the federal government, and to legalize the activity of sidewalk vending as a means of economic support for immigrant communities, the Legislature enacted SB 946 (Lara), Chapter 459, Statutes of 2018. SB 946 prohibited local governments from banning sidewalk vending, prohibited any infractions from being punishable as an infraction or misdemeanor, and established other parameters for local sidewalk vending ordinances.

Specifically, SB 946 prohibited cities and counties from regulating sidewalk vendors unless they adopt a regulatory framework consistent with the bill’s provisions. Among other things, SB 946 prohibited a city or county from requiring sidewalk vendors to operate within specific parts of the public right-of-way, unless that restriction is directly related to objective health, safety, or welfare concerns. Local authorities can neither restrict the overall number of sidewalk vendors, nor require sidewalk vendors to operate only in a designated area, unless these restrictions are directly related to health, safety, or welfare concerns.

SB 946 did allow cities and counties to adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns. It also allowed cities and counties to prohibit sidewalk vendors near special events, and to prohibit stationary vendors (but not roaming vendors) in certain circumstances in parks and exclusively residential zones.

SB 946 also specifically allowed local agencies to prohibit sidewalk vendors in the immediate vicinity of a permitted certified farmers’ market market, or a permitted swap meet during the limited operating hours of that certified farmers’ market or swap meet.

5) **Policy Considerations.** The Committee may wish to consider the following:

Annual fairs, while they are financially accessible to many in their communities, are not always affordable for everyone. The charges for admission and amusement activities alone may be cost-prohibitive, and the price of food and water – which are basic necessities – inside of the fair’s gates can impose an additional burden on many families. Sidewalk vendors can help ease some of these constraints as families approach or leave the fair.

In addition, as noted above, sidewalk vending is a critical source of income for thousands of families in California. The Committee may wish to consider if additional specificity is needed to continue to allow a reasonable amount of sidewalk vending near fairs while still alleviating the concerns that have been expressed by the author and sponsor of this bill.

6) **Committee Amendments.** The Committee may wish to amend this bill as follows:

Delete the existing language amending GOV § 50138(d)(1) and, instead, add the following to GOV § 50138(d):

(2) Prohibit sidewalk vendors within 250 feet of the following:

(A) Entrances to, and exits from, an annual fair during the operating hours of the annual fair.

(B) Entrances to, and exits from, parking lots located on fairgrounds and being used for parking during the operating hours of the annual fair.

(C) For purposes of this paragraph, “annual fair” means an annual fair operated by a district agricultural association, county fair, or citrus fruit fair, as described in Division 3 (commencing with Section 3001) of the Food and Agriculture Code.

7) **Previous Legislation.** SB 1290 (Allen) of 2022 would have required, by January 1, 2025, the Governor’s Office of Business and Economic Development to submit a specified report to the Legislature on local sidewalk vending in California. SB 1290 was held in the Assembly Appropriations Committee.

SB 972 (Gonzalez), Chapter 489, Statutes of 2022, established a new type of retail food facility called a “compact mobile food operation” (CMFO) as a subcategory of mobile food facility that is nonmotorized and operates from a pushcart or stand; exempted CMFOs from various provisions of the retail food code law, including certain sink requirements; prohibited criminal penalties from applying to CMFOs and instead limited enforcement to administrative penalties; and, exempted sales from CMFOs from counting toward the limits for cottage food operators or microenterprise home kitchens.

SB 946 (Lara), Chapter 459, Statutes of 2018, decriminalized sidewalk vending and established various requirements for local regulation of sidewalk vendors.

8) **Arguments in Support.** The Western Fairs Association, sponsor of this bill, writes, “Currently, local governments have the authority prohibit sidewalk vendors from operating outside of a certified farmer's market and flea markets. California’s Fair Network is a vital asset to our local communities and emergency operations systems. During the pandemic, several fairgrounds served as testing locations, command centers for the Office of

Emergency Services, and homeless shelters. Additionally, fairs are designated staging areas for natural disaster response. These services are provided without reimbursement from the state.

“Fairs host ten million visitors each year and the most attended event at each fairground is the annual fair. Over the last two years, fairs have seen an increase in sidewalk vendors operating during their annual fairs. This has caused a potential decrease in the amount of revenue generated inside the fair, as well as increased traffic and congestion in parking lots. Additionally, permitted fair vendors have routinely complained about the presence of unpermitted vendors operating directly outside of the fairs. AB 2791 will ensure that annual fairs operate in the most efficient and profitable way possible.”

9) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Western Fairs Association [SPONSOR]

Opposition

None on file

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