

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1290 (Allen) – As Amended June 21, 2022

SENATE VOTE: 23-4

SUBJECT: Sidewalk vendors.

SUMMARY: Requires the Governor’s Office of Business and Economic Development (GO-Biz) to complete a report on the extent of noncompliance with local sidewalk vending ordinances. Specifically, **this bill:**

- 1) Requires, on or before January 1, 2025, GO-Biz to complete and submit to the Legislature a report on the extent of noncompliance with local sidewalk vending ordinances in California.
- 2) Requires the report to include recommendations for legislative changes, if any, needed to reduce occurrences of repeated noncompliance with local sidewalk vending ordinances without unduly burdening the sidewalk vendor community.
- 3) Requires the report to be submitted in compliance with existing law governing reports to the Legislature.
- 4) Contains a sunset date of January 1, 2029.

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.
- 2) Regulates businesses that sell food under the California Retail Food Code (CRFC).
- 3) Prohibits local authorities from regulating sidewalk vendors, unless they adopt a regulatory framework consistent with the following provisions:
 - 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 prohibit sidewalk vendors from operating near farmers markets, swap meets, and special events, and to prohibit stationary vendors (but not roaming vendors) in certain circumstances in parks and exclusively residential zones. Sidewalk vending in parks may be further restricted 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.
 - iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.
- c) 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.
 - d) Prohibits criminal penalties for violations of sidewalk vending ordinances and instead establishes an administrative fine structure.
 - e) 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.
 - f) 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.
 - g) 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.

FISCAL EFFECT: According to the Senate Appropriations Committee, “Unknown, potentially significant one-time costs, likely in the mid- to high-hundreds of thousands of dollars, for GO-Biz to conduct research on local sidewalk vending ordinances, coordinate with local agencies to collect and analyze compliance and violation data, and produce the report.”

COMMENTS:

- 1) **Bill Summary.** This bill requires GO-Biz to complete a report on the extent of noncompliance with local sidewalk vending ordinances in California, and submit the report to the Legislature by January 1, 2025.

The report must include recommendations for legislative changes, if any, needed to reduce occurrences of repeated noncompliance with local sidewalk vending ordinances without unduly burdening the sidewalk vendor community. This bill sunsets on January 1, 2029.

This bill is sponsored by the City of Santa Monica.

- 2) **Author’s Statement.** According to the author, “Our Legislature is importantly engaged this year in efforts to provide more reasonable, affordable legal pathways for street vending throughout California communities. Yet within some of those communities are those exploiting the goodwill of the state’s more permissive street vending laws to operate with

disregard for property, public health, and public safety. SB 1290 will require a statewide study on noncompliance with local vending ordinances and a report to the Legislature on potential solutions. This report will help the Legislature find both an accessible pathway for California's mobile vendors to operate legally and meaningful tools for local governments to ensure vending is occurring in concert with public health and safety."

- 3) **Police Power of Cities and Counties.** 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.

- 4) **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.”

- 5) **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.

Cities and counties can also prohibit sidewalk vendors near farmers markets, swap meets, and special events, and they can prohibit stationary vendors (but not roaming vendors) in certain circumstances in parks and exclusively residential zones. Sidewalk vending in parks may be further restricted if the requirements are any of the following:

- a) Directly related to objective health, safety, or welfare concerns.
- b) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities.
- c) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

SB 946 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, such as requirements to:

- a) Limit the hours of operation of sidewalk vendors in a manner that is not unduly restrictive.
 - b) Maintain sanitary conditions.
 - c) Obtain a local business license and a valid seller's permit from the California Department of Tax and Fee Administration.
 - d) Require compliance with other generally applicable laws.
- 6) **Fines Under SB 946.** SB 946 specifically prohibited criminal penalties for violations of sidewalk vending ordinances and instead established an administrative fine structure. The bill allowed 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.

An adjudicator of these fines must take into account the ability of the violator to pay the fine, and a violator may request 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. SB 946 prohibited local authorities from imposing any additional financial penalties, prohibited penalties for violations of sidewalk vending from being infractions or misdemeanors, and prohibited sidewalk vendors from being subject to arrest, except where permitted under law.

- 7) **Enforcement Challenges for the City of Santa Monica.** Following the enactment of SB 946, the City of Santa Monica established a compliant sidewalk vending program. Among the city's regulations on sidewalk vending are a prohibition on vending on the Santa Monica Pier or within 100 feet of it, except for the 13 licensed concessionaires. Santa Monica also prohibits stationary vending at the beach, Third Street Promenade, or portions of Palisades Park within 500 feet of the Pier Bridge.

In recent years, concerns arose that unpermitted sidewalk vendors continued to vend on the Pier despite being issued fines for doing so. In addition, according to the city, some vendors have been using combustible fuels on the wooden Pier, posing a fire hazard. The city has also cited instances of vendors who have improperly disposed of liquid and solid waste on the beach and on or near the Pier. In response, the City of Santa Monica adopted additional sidewalk vending rules and stepped up enforcement efforts at the Pier by deploying police, code enforcement, health officers, and private security.

- 8) **Continued Challenges for Sidewalk Vendors.** While cities and counties can no longer criminalize street vending and must accept lower fines from those who lack the ability to pay, the penalties for violating local sidewalk vending requirements can still add up and have broader consequences for individuals who are found to have violated these laws. For example, an individual may be cited for multiple violations of different provisions of a sidewalk vending ordinance on the same day, allowing the local jurisdiction to impose the maximum fines of \$300 per violation in short order. Even with the ability-to-pay reduction, these fines can add up to hundreds of dollars a day. Unpaid fines can be sent to collections agencies and may impact individuals' credit or ability to secure a job or rent an apartment.

An August 2021 report by the UCLA School of Law Community Economic Development Clinic and the non-profit law firm Public Counsel, along with other street vendor advocates, found that, although SB 946 improved opportunities for non-food merchandise vendors in the Los Angeles area, the CRFC also raises many barriers for food vendors. Specifically, the report found:

“...most sidewalk food vendors are still denied access to the formal economy by a potent combination of inaccessible permitting procedures, exorbitant costs, incompatible equipment and design standards, and punitive enforcement measures. Together, these barriers – all products of an antiquated state Retail Food Code and county guidelines not drafted with vendors in mind – make it impossible or prohibitively expensive to obtain a permit to legally vend food. Of an estimated 10,000 sidewalk food vendors working in the City of Los Angeles, only 165 have received permits.”

As a result, many food vendors continue to operate without valid permits. The report recommends a broad suite of changes to the CRFC and the way the County of Los Angeles administers the CRFC, as well as other recommendations for changes to the City of Los Angeles's sidewalk vending program, including to:

- a) Maintain a moratorium on citations for unpermitted vending until permit barriers are removed.
 - b) Reorient enforcement practices away from punitive law enforcement and toward business facilitation through education.
 - c) Replace “no vending zones” with special vending districts.
 - d) Support sidewalk food vendors with additional resources.
- 9) **Continued Challenges for Local Ordinances.** According to a Policy Brief by the UC Davis Center for Poverty and Inequality Research dated November 2021, “...the majority of cities (85 percent of those reviewed) and counties (75 percent) include street food-vending

regulations that go beyond public health rationale and include labor laws and restrictions on time and hours of operation. Only 15 percent of cities we reviewed allow street-food vending without restrictions in the municipal ordinance; for counties, the figure rises to 25 percent. Most cities and counties required vendors to apply for (and display) city permits. Yet, only sixty-three cities and thirteen counties linked city permits to public health offices in their municipal ordinance, thereby calling attention to requirements for a public health official to inspect vendors' vehicles and make sure that they followed the current health standards. Thus, restrictions for street-food vending focus less on public health and more on regulating operation time, location and vending operators.

“Over 65 percent of the cities reviewed allow vending with time restrictions. The most common time limit required vendors to stop no longer than 10 minutes, a period of time too short to enable vendors to prepare and wrap food, or deliver food to a line of customers. Such restrictions effectively ban the practice of street-food vending. Another prevalent regulation is related to land-use. For example, 73 cities and 5 counties prohibited or restricted vending near schools and 36 cities and 4 counties restricted vending in public parks. However, the Safe Sidewalk Vending Act expressly prohibits local regulations from banning vending in public parks.

“Labor restrictions were prevalent in cities (43 percent, 91 cities) and counties (43 percent, 25 counties). Many cities and counties had legislation in place to prohibit undocumented individuals from operating mobile food facilities. For example, sixteen cities required a Social Security number to be listed on the application, making it impossible for undocumented workers to legally operate. Such regulations were not in place for brick-and-mortar restaurant owners or workers. Fourteen cities and one county prohibited pushcarts and human-powered devices, the vending vehicle most often used by immigrant farmers. Yet, these sites allowed food trucks, demonstrating discrepancies in public health regulations along the lines of socioeconomic status.

“Our results show that the majority of California’s surveyed cities and counties place restrictions on street-food vending that go beyond public health considerations and may exacerbate health disparities or produce negative health outcomes. The high cost of regulations, limited business times, restrictions on locations near highly trafficked areas, and requirements for criminal background checks and social security numbers are all impediments to the street food-vending model. In many cases, such restrictions effectively ban the practice...”

- 10) **Policy Considerations and Committee Amendments.** As noted above, there appears to be a variety of continued challenges for both local governments and the vending community since SB 946 was enacted. This bill requires a report on only one aspect of these challenges – noncompliance on the part of sidewalk vendors. In order to address additional issues and include a broader range of stakeholders, the Committee may wish to amend this bill as follows:

51039.9. (a) On or before January 1, 2025, the Governor’s Office of Business and Economic Development shall complete and submit to the Legislature a report on **local sidewalk vending in California. In producing the report, the office shall consult with the following:**

(1) The University of California, Los Angeles Center for Labor Research and Education.

(2) The University of California, Davis Center for Poverty and Inequality Resesarch.

(3) Organizations that represent sidewalk vendors.

(4) Local authorities, including, but not limited to, local authorities that have adopted a sidewalk vending ordinance, and associations that represent local authorities.

(5) Other affected stakeholders.

(b) The report submitted pursuant to subdivision (a) shall include, but not be limited to, all of the following:

(1) Barriers to obtaining a permit or a valid business license for sidewalk vending pursuant to this Chapter, including, but not limited to, permit fees, lack of education or knowledge regarding the permitting process, language or cultural barriers, or other barriers.

(2) Barriers to operating in compliance with this Chapter for sidewalk vendors.

(3) An assessment of local sidewalk vending ordinances, including, but not limited to, the number of local authorities that have enacted an ordinance, whether those ordinances comply with this Chapter, and barriers local authorities face in adopting compliant ordinances.

(4) ~~the~~ The extent of noncompliance with local sidewalk vending ordinances in California California, including, but not limited to, the number of citations issued, the type of citations issued, the number of individual vendors with multiple citations, and the number of vendors issued reduced fines pursuant to Section 51039.

(5) ~~and recommendations~~ Recommendations for legislative changes, if any, or best practices needed to reduce or eliminate barriers identified in the report, ensure that local jurisdictions adopt or amend sidewalk vending ordinances that comply with this Chapter, and reduce occurrences of repeated noncompliance with local sidewalk vending ordinances without unduly burdening the sidewalk vendor community.

(~~b~~) (c) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795.

(~~e~~) (d) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

- 11) **Related Legislation.** SB 972 (Gonzalez) of this year establishes a new type of retail food operation called a “compact mobile food operation,” outlines a regulatory structure for these operations, allows a permitted cottage food operation or microenterprise home kitchen operation to serve as a commissary or mobile support unit for up to two compact mobile food operations, and makes a number of related changes to law. SB 972 is scheduled to be heard in the Assembly Health Committee on June 28, 2022.

- 12) **Prior Legislation.** SB 946 (Lara), Chapter 459, Statutes of 2018, decriminalized sidewalk vending and established various requirements for local regulation of sidewalk vendors.
- 13) **Arguments in Support.** The City of Santa Monica, sponsor of this bill, writes, “In 2019, SB 946, which decriminalized street vending, went into effect, and the City promptly created a local sidewalk vending permitting program. The City worked with local vendors and vending advocates to help shape a low-barrier, accessible program, and developed bilingual outreach aimed at supporting sidewalk vendors through our permitting process. Since we launched our program, we have issued more than 100 sidewalk vending permits each year. Our code enforcement officers have shared thousands of bilingual fliers and have made extensive education and outreach efforts to inform vendors of our program and encourage them to get permitted.

“The City, however, faces a serious challenge at the Santa Monica Pier. Our historic pier is a wooden structure that is flammable. On any given day, unpermitted vendors gather in large numbers at this location, creating an unsafe environment for themselves and the public by cooking with open flames and unpermitted combustible fuels. The Pier also has limited emergency access and capacity limits, particularly on warm days when the beach is full. For these reasons, it is not legal to vend on or within 100 feet of the Pier. Despite this, many vendors have been unwilling to move away from the Pier to other locations that are safer and less crowded.

“SB 1290 (Allen) will ask the Governor’s Office of Business and Economic Development to complete and submit a report to the Legislature on the extent of noncompliance with local sidewalk vending ordinances in California and make recommendations for changes to reduce the occurrences of repeated noncompliance with local ordinances without unduly burdening sidewalk vendors that are following the established rules in place. We believe that this study will yield results that would recognize the benefits of permitted sidewalk vending while developing recommendations for statutory changes that will help discourage unpermitted vending that poses health and safety concerns.”

- 14) **Arguments in Opposition.** The Western Center on Law and Poverty, in opposition, writes, “In recent years, the Legislature has taken bold action to move away from unjust criminalization and penalization practices that have disproportionately affected immigrant and low-income communities. The Legislature continues these laudable steps by considering the reform of outdated systems, such as the food permitting system with Senate Bill 972, to ensure that low-income microentrepreneurs can formalize and grow their businesses. The focus should continue to be on how to bring more sidewalk vendors into compliance with state and local laws.

“SB 1290 would mandate a study conducted by the Governor’s Office of Business and Economic Development (Go-Biz) of noncompliance with local sidewalk vending ordinances and recommendations for potential legislation to ‘reduce occurrences of repeated noncompliance.’ However, the bill does not require an analysis of the barriers that low-income and/or immigrant sidewalk vendors may continue to face in complying with local vending ordinances, nor does it address the lack of compliance local jurisdictions have with SB 964 (Lara). It does not require Go-Biz to consult with other agencies or offices that have expertise with immigrants or low-income entrepreneurs, or to incorporate those barriers into a holistic analysis of why noncompliance may still occur. Finally, it does not require

consultation with local vending organizations or community based organizations that can identify the specific barriers with local vending ordinances that may result in noncompliance.

“The best way to address challenges with unpermitted vending is to help vendors get permits. SB 1290 does not further that goal. Instead, it opens the door to future threats of increased enforcement against sidewalk vendors and distracts from ongoing efforts to remove barriers and open up opportunities for safe sidewalk vending. We oppose SB 1290 and instead encourage efforts to make the necessary changes to state law that will support our sidewalk vending community’s path to formalization.”

REGISTERED SUPPORT / OPPOSITION:**Support**

City of Santa Monica [SPONSOR]
Blue Gold Fleet
California Attractions and Parks Association
California Travel Association
Civic Center Community Benefit District
Fisherman's Wharf Community Benefit District
Golden Gate Restaurant Association
Hotel Council of San Francisco
Pacific Park Santa Monica
Pier 39
San Diego Tourism Authority
San Francisco Chamber of Commerce
San Francisco Travel Association
Santa Cruz Beach Boardwalk
Santa Monica Chamber of Commerce
Santa Monica Pier Corporation
Santa Monica Travel & Tourism
Tandem
Visit Sacramento

Opposition

Alliance San Diego (prior version)
Insurance Commissioner Ricardo Lara (prior version)
California Hispanic Chamber of Commerce (prior version)
Coalition for Humane Immigrant Rights
Community Health Councils (prior version)
Community Power Collective
Comunidades Indígenas En Liderazgo (prior version)
Courage California (prior version)
Inclusive Action for the City
Little Tokyo Service Center (prior version)
Los Angeles Community Action Network (prior version)

Los Angeles Food Policy Council (prior version)
Mission Asset Fund (prior version)
Public Counsel
Western Center on Law & Poverty

Analysis Prepared by: Angela Mapp and Rainer Apostol / L. GOV. / (916) 319-3958