

AMENDED IN ASSEMBLY JUNE 11, 2018

AMENDED IN SENATE APRIL 24, 2018

AMENDED IN SENATE APRIL 11, 2018

SENATE BILL

No. 946

Introduced by Senator Lara

(Coauthors: Assembly Members Eduardo Garcia and McCarty)

January 29, 2018

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

LEGISLATIVE COUNSEL'S DIGEST

SB 946, as amended, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except ~~where~~ *when* that restriction is directly related to objective health, safety, or

welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time and manner of sidewalk vending, as specified. ~~The bill would prohibit a person from operating as a sidewalk vendor in violation of, or a sidewalk vendor from violating, a local authority's sidewalk vending program, as specified.~~ *specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to 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, as specified.* A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize 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, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) Sidewalk vending provides important entrepreneurship and
- 4 economic development opportunities to low-income and immigrant
- 5 communities.

1 (2) Sidewalk vending increases access to desired goods, such
2 as culturally significant food and merchandise.

3 (3) Sidewalk vending contributes to a safe and dynamic public
4 space.

5 (4) The safety and welfare of the general public is promoted by
6 encouraging local authorities to support and properly regulate
7 sidewalk vending.

8 (5) The safety and welfare of the general public is promoted by
9 prohibiting criminal penalties for violations of sidewalk vending
10 ordinances and regulations.

11 (6) This act applies to any ~~city or county~~ *city, county*, or city
12 and county, including a charter city. The criminalization of small
13 business entrepreneurs, and the challenges that those entrepreneurs
14 face as a result of a criminal record, are matters of statewide
15 concern. Further, unnecessary barriers have been erected blocking
16 aspiring entrepreneurs from accessing the formal economy,
17 harming California's economy in the process, and disrupting the
18 regulation of business, which is a matter of statewide concern.
19 Moreover, California has an interest in the regulation of traffic, a
20 matter of statewide concern, whether in ensuring the appropriate
21 flow of traffic or in ensuring the safety of pedestrians on the road
22 or the sidewalk.

23 (b) It is the intent of the Legislature to promote entrepreneurship
24 and support immigrant and low-income communities.

25 SEC. 2. Chapter 6.2 (commencing with Section 51036) is added
26 to Part 1 of Division 1 of Title 5 of the Government Code, to read:

27
28 CHAPTER 6.2. SIDEWALK VENDORS
29

30 51036. For purposes of this chapter, the following definitions
31 apply:

32 (a) "Sidewalk vendor" means a person who sells food or
33 merchandise from a pushcart, stand, display, pedal-driven cart,
34 wagon, showcase, rack, or other nonmotorized conveyance, or
35 from one's person, upon a public sidewalk or other pedestrian
36 path.

37 (b) "Roaming sidewalk vendor" means a sidewalk vendor who
38 moves from place to place and stops only to complete a transaction.

39 (c) "Stationary sidewalk vendor" means a sidewalk vendor who
40 vends from a fixed location.

(d) “Local authority” means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed 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 in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority’s sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except ~~where~~ *when* that restriction is directly related to objective health, safety, or welfare concerns. ~~For purposes of this paragraph, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.~~

(2) (A) 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.

(B) Notwithstanding subparagraph (A), 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.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

1 (3) A local authority shall not require a sidewalk vendor to first
2 obtain the consent or approval of any nongovernmental entity or
3 individual before he or she can sell food or merchandise.

4 (4) (A) A local authority shall not restrict sidewalk vendors to
5 operate only in a designated neighborhood or area, except ~~where~~
6 *when* that restriction is directly related to objective health, safety,
7 or welfare concerns.

8 (B) Notwithstanding subparagraph (A), a local authority may
9 prohibit stationary sidewalk vendors in areas where commercial
10 uses are not a permitted use, but shall not prohibit roaming
11 sidewalk vendors.

12 (5) A local authority shall not restrict the overall number of
13 sidewalk ~~vendors~~, *vendors permitted to operate within the*
14 *jurisdiction of the local authority*, unless the restriction is directly
15 related to objective health, safety, or welfare concerns.

16 (c) A local authority may, by ordinance or resolution, adopt
17 additional requirements regulating the time and manner of sidewalk
18 ~~vending~~, *vending if the requirements are directly related to*
19 *objective health, safety, or welfare concerns*, including, but not
20 limited to, any of the following:

21 (1) Limitations on hours of operation that are not unduly
22 restrictive. In nonresidential areas, any limitations on the hours of
23 operation for sidewalk vending shall not be more restrictive than
24 any limitations on hours of operation imposed on other businesses
25 or uses on the same street.

26 (2) Requirements to maintain sanitary conditions.

27 (3) *Requirements necessary to ensure compliance with the*
28 *federal Americans with Disabilities Act of 1990 (Public Law*
29 *101-336) and other disability access standards.*

30 ~~(3)~~

31 (4) Requiring the sidewalk vendor to ~~possess~~ *obtain from the*
32 *local authority a permit for sidewalk vending or a valid business*
33 *license*, provided that the local authority issuing the *permit or*
34 *business license* accepts a California driver's license or
35 identification number, an individual taxpayer identification number,
36 or a municipal identification number in lieu of a social security
37 number if the local authority otherwise requires a social security
38 number for the issuance of a *permit or business license*, and that
39 the number collected shall not be available to the public for
40 inspection, is confidential, and shall not be disclosed except as

1 required to administer the *permit or* licensure program or comply
2 with a state law or state or federal court order.

3 ~~(4)~~

4 (5) Requiring the sidewalk vendor to possess a valid California
5 Department of Tax and Fee Administration seller's permit.

6 ~~(5)~~

7 (6) Requiring additional licenses from other state or local
8 agencies to the extent required by law.

9 ~~(6)~~

10 (7) Requiring compliance with other generally applicable laws.

11 ~~(7)~~

12 (8) Requiring a sidewalk vendor to submit information on his
13 or her operations, including, but not limited to, any of the
14 following:

15 (A) The name and address of the sidewalk vendor.

16 (B) A description of the merchandise offered for sale or
17 exchange.

18 (C) A certification by the vendor that to his or her knowledge
19 and belief, the information contained on the form is true.

20 (D) The California seller's permit number (California
21 Department of Tax and Fee Administration sales tax number), if
22 any, of the sidewalk vendor.

23 (E) If the sidewalk vendor is an agent of an individual, company,
24 partnership, or corporation, the name and business address of the
25 principal.

26 *(d) Notwithstanding subdivision (b), a local authority may do*
27 *both of the following:*

28 *(1) Prohibit sidewalk vendors in areas located within the*
29 *immediate vicinity of a permitted certified farmers' market or a*
30 *permitted swap meet during the limited operating hours of that*
31 *certified farmers' market or swap meet. A "certified farmers'*
32 *market" means a location operated in accordance with Chapter*
33 *10.5 (commencing with Section 47000) of Division 17 of the Food*
34 *and Agriculture Code and any regulations adopted pursuant to*
35 *that chapter. A "swap meet" means a location operated in*
36 *accordance with Article 6 (commencing with Section 21660) of*
37 *Chapter 9 of Division 8 of the Business and Professions Code, and*
38 *any regulations adopted pursuant to that article.*

39 *(2) Restrict or prohibit sidewalk vendors within the immediate*
40 *vicinity of any part of the sidewalk that is subject to a separate*

1 temporary sidewalk use permit issued by the local authority,
2 provided that any notice, business interruption mitigation, or other
3 rights provided to affected businesses or property owners under
4 the local authority's separate temporary sidewalk use permit are
5 also provided to any sidewalk vendors specifically permitted to
6 operate in the area, if applicable. For purposes of this paragraph,
7 a separate temporary sidewalk use permit shall include, but not
8 be limited to, a temporary permit for filming, parades, or outdoor
9 concerts. A prohibition of sidewalk vendors pursuant to this
10 paragraph shall only be effective for the limited duration of the
11 separate temporary sidewalk use permit.

12 (e) For purposes of this section, perceived community animus
13 or economic competition does not constitute an objective health,
14 safety, or welfare concern.

15 ~~51039. (a) A person shall not operate as a sidewalk vendor in~~
16 ~~violation of a program adopted by a local authority if that local~~
17 ~~authority has adopted a sidewalk vending program that complies~~
18 ~~with Section 51038.~~

19 ~~(b) A sidewalk vendor shall not violate the terms of a local~~
20 ~~authority's sidewalk vending program that complies with Section~~
21 ~~51038.~~

22 ~~(e)~~
23 51039. (a) (1) A violation of ~~subdivision (a) or (b)~~ a local
24 authority's sidewalk vending program that complies with Section
25 51038 is punishable only by the following:

26 (A) An administrative fine not exceeding one hundred dollars
27 (\$100) for a first violation.

28 (B) An administrative fine not exceeding two hundred dollars
29 (\$200) for a second violation within one year of the first violation.

30 (C) An administrative fine not exceeding five hundred dollars
31 (\$500) for each additional violation within one year of the first
32 violation.

33 (2) A local authority may rescind a permit issued to a sidewalk
34 vendor for the term of that permit upon the fourth violation or
35 subsequent violations of ~~subdivision (a) or (b)~~ violations.

36 ~~(d)~~

37 (b) The proceeds of an administrative fine assessed pursuant to
38 subdivision ~~(e)~~ (a) shall be deposited in the treasury of the local
39 authority.

40 ~~(e)~~

(c) Failure to pay an administrative fine pursuant to subdivision (e) (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (e) (a) shall not be assessed.

(f)

(d) (1) A violation of ~~subdivision (a) or (b)~~, a local authority's sidewalk vending program that complies with Section 51038, 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 that has not adopted a sidewalk vending program pursuant to Section 51038, authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except where when permitted under law.

(2) Notwithstanding any other law, paragraph (1) 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.

(g)

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(h)

(f) (1) When assessing an administrative fine pursuant to subdivision (e), (a), the adjudicator shall 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.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full

1 satisfaction, 20 percent of the administrative fine imposed pursuant
2 to subdivision ~~(e)~~: (a).

3 (3) The local authority may allow the person to complete
4 community service in lieu of paying the total administrative fine,
5 may waive the administrative fine, or may offer an alternative
6 disposition.

7 ~~(i)~~

8 (g) (1) A person who is currently serving, or who completed,
9 a sentence, or who is subject to a fine, for a conviction of a
10 misdemeanor or infraction for sidewalk vending, whether by trial
11 or by open or negotiated plea, who would not have been guilty of
12 that offense under the act that added this section had that act been
13 in effect at the time of the offense, may petition for dismissal of
14 the sentence, fine, or conviction before the trial court that entered
15 the judgment of conviction in his or her case.

16 (2) Upon receiving a petition under paragraph (1), the court
17 shall presume the petitioner satisfies the criteria in paragraph (1)
18 unless the party opposing the petition proves by clear and
19 convincing evidence that the petitioner does not satisfy the criteria.
20 If the petitioner satisfies the criteria in paragraph (1), the court
21 shall grant the petition to dismiss the sentence or fine, if applicable,
22 and dismiss and seal the conviction, because the sentence, fine,
23 and conviction are legally invalid.

24 (3) Unless requested by the petitioner, no hearing is necessary
25 to grant or deny a petition filed under paragraph (1).

26 (4) If the court that originally sentenced or imposed a fine on
27 the petitioner is not available, the presiding judge shall designate
28 another judge to rule on the petition.

29 (5) Nothing in this subdivision is intended to diminish or
30 abrogate any rights or remedies otherwise available to the
31 petitioner.

32 (6) Nothing in this subdivision or related provisions is intended
33 to diminish or abrogate the finality of judgments in any case not
34 falling within the purview of this chapter.

35 SEC. 3. The Legislature finds and declares that Section 2 of
36 this act, which adds Section 51038 to the Government Code,
37 imposes a limitation on the public's right of access to the meetings
38 of public bodies or the writings of public officials and agencies
39 within the meaning of Section 3 of Article I of the California
40 Constitution. Pursuant to that constitutional provision, the

1 Legislature makes the following findings to demonstrate the interest
2 protected by this limitation and the need for protecting that interest:
3 The Legislature finds and declares that in order to protect the
4 privacy of a sidewalk vendor with regard to his or her California
5 driver's license or identification number, individual taxpayer
6 identification number, or municipal identification number, when
7 that number is collected in lieu of a social security number for
8 purposes of the issuance of a business license, it is necessary that
9 the sidewalk vendor's number be confidential, except as provided
10 in this act.

O