



City of Huntington Beach

File #: 19-103

MEETING DATE: 1/22/2019

REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Michael E. Gates, City Attorney

PREPARED BY: Michael E. Gates, City Attorney

Subject:

Adopt Emergency Ordinance No. 4177 adding Chapter 5.100 to the Huntington Beach Municipal Code (HBMC) establishing a Sidewalk Vending Permitting and Regulatory Program and repealing Section 5.50.170(F) which prohibits vending from a human powered conveyance

Five Affirmative Votes are required to adopt per Charter Section 501

Statement of Issue:

The City of Huntington Beach currently prohibits Sidewalk Vending. On September 18, 2018, Governor Brown signed into law Senate Bill ("SB") 946, adding Government Code Sections 51036-51039, which impose limits on how local authorities, may regulate sidewalk vending. SB 946 took effect on January 1, 2019. The purpose of this Emergency Ordinance is to immediately establish a Sidewalk Vendor Permitting and Regulatory Program to encourage small business activities by removing total prohibitions on Sidewalk Vending and providing for the immediate regulation and enforcement of unpermitted Sidewalk Vending Activities to protect the publics' health, safety and welfare.

Financial Impact:

Not applicable.

Recommended Action:

Adopt Emergency Ordinance No. 4177, "An Emergency Ordinance of the City of Huntington Beach Adding Chapter 5.100 To The Huntington Beach Municipal Code Establishing A Sidewalk Vending Permitting And Regulatory Program And Repealing Section 5.50.170(F) Which Prohibits Vending From A Human Powered Conveyance."

Alternative Action(s):

Do not adopt Emergency Ordinance No. 4177, and provide Council direction.

Analysis:

As discussed, the City of Huntington Beach currently prohibits Sidewalk Vending. The State has recently adopted legislation that attempts to deregulate, on the local level, sidewalk vending by attempting to preempt city laws with regard to Sidewalk Vending. This State law, SB 946, seeks to impermissibly strip the Charter cities authority under Article XI, Section 5 of the California Constitution with respect to "Municipal Affairs." However, the authority of a City to regulate its parks and sidewalks has long been recognized as a Municipal Affair and as such outside the reach of State law. To encourage and promote small business, and avoid conflicts with regard to regulation of the City sidewalks and parks, this Emergency Ordinance is adopted pursuant to Huntington Beach Charter Section 103. Charter Section 103 authorizes the City Council "to make and enforce all laws and regulations in respect to Municipal Affairs." This Emergency Ordinance seeks to strike a balance between promoting small businesses in the form of sidewalk vending with the health, safety and welfare, of the City of Huntington Beach. The regulations contained within this Emergency Ordinance are necessary in part to:

1. Ensure no interference with the performance of public safety officers including, police, firefighter, lifeguard, security and emergency medical personnel services;
2. Ensure no interference with pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles;
3. Provide reasonable access for Sidewalk Vending Activities in portions of the City while preserving the use and maintenance of sidewalks, pathways, poles, posts, traffic signs or signals, hydrants, restrooms, trash receptacles, firefighting apparatus, mailboxes, public benches and/or planters, as well as access to locations used for public transportation services;
4. Ensure the safe sale of Food and Merchandise in the public right-of-way, by providing the public a simple way to ensure Sidewalk Vendors prepare Food safely and according to Orange County Department of Public Health requirements;
5. Protect the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles; and
6. Reduce exposure to the City for personal injury or property damage claims and litigation.

This Emergency Ordinance is also adopted as an emergency measure pursuant to Charter Section 501 for the immediate preservation of the public peace, health, and safety, by eliminating any uncertainty regarding the extent that sidewalk vending will be permitted in the City in light of the passage of SB 946. This Ordinance will expire in 120 days. During this time period, staff will return to City Council with recommendations for a permanent Ordinance to address additional issues related to this program.

Environmental Status:

Not applicable.

Strategic Plan Goal:

Improve quality of life

Attachment(s):

1. Ordinance No. 4177, "An Emergency Ordinance of the City of Huntington Beach Adding Chapter 5.100 to the Huntington Beach Municipal Code Establishing a Sidewalk Vending Permitting and Regulatory Program, and Repealing Section 5.50.170(F) Which Prohibits Vending from a Human Powered Conveyance"
2. Legislative Draft re HBMC Section 5.50.170.