



Staff Report

File #: REPORT 19-0141, Version: 1

**Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of March 12, 2019**

**CONSIDERATION OF AN ORDINANCE REGULATING
SIDEWALK VENDING IN COMPLIANCE WITH SB 946**

(Acting Public Works Director Lucho Rodriguez)

Recommended Action:

Staff recommends that the City Council:

1. Introduce, upon first reading, an ordinance to regulate sidewalk vending within the City of Hermosa Beach in compliance with Senate Bill No. 946; and
2. Adopt a resolution amending the City's comprehensive fee schedule to include administrative fines for sidewalk vending violations in compliance with Senate Bill No. 946; and
3. Adopt a resolution amending the City's comprehensive fee schedule to include a sidewalk vending permit application fee and annual renewal fee.

Executive Summary:

Senate Bill 946 ("SB 946"), which took effect January 1, 2019, makes the regulation and criminalization of sidewalk vending a matter of statewide concern. Accordingly, cities and counties may no longer prohibit or regulate sidewalk vendors in the public right-of-way or in public parks except in accordance with the new state law, and enforcement of local sidewalk vending ordinances is limited to administrative fines (as opposed to criminal penalties).

Sections of the Hermosa Beach Municipal Code relating to sidewalk vending are currently in conflict with the requirements of SB 946. If the City wishes to regulate sidewalk vending, it will need to adopt regulations that are consistent with state law. Absent substantially compliant local regulations, the default rules set forth in state law will apply-potentially allowing for unregulated sidewalk vending in the public right-of-way and within public parks.

Background:

SB 946 (Gov. Code sections 51036-51039) was enacted to promote entrepreneurship and to provide economic development opportunities for immigrant and low-income communities. The Legislature found that sidewalk vending increases access to desired goods (such as culturally significant food and merchandise) and that sidewalk vending contributes to safe and dynamic public spaces. Based on these findings, the Legislature sought to decriminalize sidewalk vending and to encourage local authorities to properly regulate the activity. To this end, a city or county may no longer prohibit or

regulate sidewalk vending in the public right-of-way or in public parks except in accordance with the new state law.

For purposes of SB 946, a “sidewalk vendor” refers to a person who sells “food or merchandise” from any “non-motorized conveyance” (such as a pushcart, a stand, or even from one’s person) upon “a public sidewalk or other pedestrian path.”¹ A sidewalk vendor can be roaming or stationary. (Note that food trucks and other forms of motorized vending along roadways or public areas not designated for pedestrian travel (e.g., parking lots) are not covered by the new law.)

Decriminalizing Violations While the decriminalization of street vending has been the subject of public discussion in California for a long time, the federal government’s recent escalation of deportations added urgency to the Legislature’s action. Last year, activists were galvanized when a woman in Rancho Cucamonga was arrested and detained by immigration authorities for selling corn in a city park. To avoid state complicity in the federal deportation of individuals for infractions and misdemeanors, SB 946 prohibits California cities from criminalizing sidewalk vending violations. Rather, state law now sets forth a mandated schedule of administrative fines as the only permissible penalty for vending violations and also requires ability-to-pay determinations when assessing fines.

Justifying Regulation

In addition to decriminalizing the activity, SB 946 restricts a city’s authority to prohibit sidewalk vending outright. State law now recognizes sidewalk vending as a legitimate way of earning a living and any regulation of the activity must be in accordance with the following requirements of SB 946:

- Generally, a city may only regulate the time, place, and manner of sidewalk vending for reasons “directly related to objective health, safety, or welfare concerns.” For example, a city may prohibit vending in a location that cannot accommodate both the activity and the minimum clearance required by objective state and federal disability access standards.
- “Perceived community animus or economic competition” does not constitute an objective public concern, and a city cannot require sidewalk vendors to obtain the consent or approval of residents or local businesses before being permitted to operate. Therefore, complaints by existing business owners cannot justify local regulation under SB 946.
- Sidewalk vendors of food remain subject to County health and safety regulations and permit requirements and other provisions of the California Retail Food Code.

¹ Government Code section 51036(a).

In other words, public locations affected by SB 946 are as follows:

- **Residential zones.** Stationary sidewalk vendors may be prohibited outright in residential zones. However, roaming sidewalk vendors (those vendors who do not operate from a fixed location) may only be restricted for reasons directly related to objective health, safety, or welfare concerns (e.g., reasonable restrictions on hours of operation would be permissible).
- **The public right-of-way.** Restrictions must be justified as directly related to objective health, safety, or welfare concerns.
- **Permitted temporary events.** Cities may prohibit vending within the “immediate vicinity” of a permitted special event, included a certified farmers’ market or swap meet, *during the limited duration of the event*.
- **Public parks** (including recreational facilities). Stationary sidewalk vendors may be prohibited outright from operating in any park for which the city has entered an exclusive concessionaire agreement. Otherwise, vendors may be subject to any of the following types of restrictions:
 - Directly related to objective health, safety, or welfare concerns;
 - Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities; or
 - Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

Issuing Permits

In addition to justified regulations, a city may control sidewalk vending under the new law through a local permitting program. Pursuant to such a program, a city may require vendors to obtain a regulatory permit and business license before being permitted to operate.

Any vendor identification collected by a city as part of its sidewalk vending permit application is deemed confidential. Staff is thus prohibited from making such records available for public inspection or otherwise disclosing the information except as required to administer the city’s permit program or to comply with a state law or a court order.

Amending Existing Code Provisions

SB 946 does not require local authorities to adopt a new regulatory program for sidewalk vending if an existing program substantially complies with the new state requirements. However, absent compliant regulations, a city may not cite, fine, or prosecute a person for violating sidewalk vending ordinances that are inconsistent with state law.

Analysis:

The existing provisions of the Hermosa Beach Municipal Code (“HBMC”) relating to sidewalk vending are in conflict with the law enacted by SB 946. Therefore, the attached ordinance proposes to amend the HBMC and regulate sidewalk vending in the City through a permitting program managed

by the City's Department of Public Works.

Summary of Proposed Amendments to the HBMC

Key provisions of the proposed permitting program include the following:

- **Legislative findings.** The proposed ordinance recites findings by the City Council-based on the circumstances of the Hermosa Beach community and concerns for its welfare-to justify the City's restrictions on sidewalk vending.
- **Definition of Sidewalk.** SB 946 defines a sidewalk vendor as one who operates "upon a public sidewalk or other pedestrian path." In turn, the proposed ordinance defines "sidewalk" to encompass standard sidewalks as well as paved pedestrian paths or walkways. Accordingly, vending on grass turf, unpaved trails, dirt paths, or other areas not designed for pedestrian travel would not be permitted.
- **Restricted vending locations.**
 - 1) Generally, sidewalk vending is only permitted on sidewalks and paved pedestrian paths and walkways.
 - 2) For reasons of public safety, vending permits may not be issued for locations that the Council has identified as "overcrowded," including the Strand and Hermosa Avenue, between 10th and 14th Streets.
 - 3) To protect the public's use and enjoyment of natural resources and recreational opportunities, and consistent with California Coastal Act and the Open Space Lands Act, permits may not be issued for sidewalk vending on the beach, the Municipal Pier, the Hermosa Beach Greenbelt, and in Noble Park.
 - 4) For reasons of public safety, the proposed ordinance requires sidewalk vendors to maintain a minimum distance of 300 feet from any public or private school ground and from the Hermosa Beach Community Center on school days, between 7:00 a.m. and 6:00 p.m. and when the Community Theater and 2nd Story Theater facilities are in use. The chosen distance and hours of restriction are based on comparable restrictions in administrative permits issued for temporary minor special events. HBMC section 17.42.150(D).
 - 5) Consistent with state law, the proposed ordinance restricts sidewalk vending within one block of a certified farmers' markets and other permitted events.
 - 6) For reasons of public safety, the proposed ordinance imposes a number of distance restrictions from street intersections, fire hydrants, emergency exits, and other sensitive locations related to emergency services and motor and pedestrian traffic safety.
 - 7) For reasons of public safety, the proposed ordinance also requires that stationary sidewalk vendors operate at a distance of at least 200 feet from another sidewalk vendor to avoid a concentration in a single location that might limit accessibility for pedestrians, affect traffic flows on the right-of-way, and pose a traffic safety hazard.
- **Permit applications.** To the extent the City requires applicants to show some form of personal identification, SB 946 requires the City to accept 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). Any such applicant identification collected by the City shall be kept confidential and shall not be available for public inspection or otherwise disclosed except as required to administer the City's permit program or to comply with state law or a court order.

- **Business license required.** In addition to a regulatory permit, sidewalk vendors are required to obtain a business license by which the City may assess a business tax.
- **Operating requirements.** Although sidewalk vendors will be not be required to obtain commercial encroachment permits (which are largely reserved for brick-and-mortar business owners extending their operations into the right-of-way adjacent to an existing storefront), sidewalk vendors will be subject to applicable local restrictions on commercial encroachments as codified in Chapter 12.16 of the municipal code. These restrictions include a mandated five (5) foot clearance for proposed vending locations, compliance with other laws and disability access requirements, restrictions against amplified sound and noise constituting a public nuisance, and requirements to maintain vending locations in clean, sanitary condition with proper trash disposal.
 - State law provides that restrictions on sidewalk vending hours in commercial areas shall not be more restrictive than the restrictions imposed on other businesses or uses on the same street. There are no such applicable hours restrictions for sidewalk vendors in Hermosa Beach.
 - State law distinguishes between “stationary sidewalk vendors” and “roaming sidewalk vendors.” The key regulatory difference between the two is that stationary vendors may be prohibited from operating in residential zones, while roaming vendors may operate therein according to restricted hours of operation.
- **Sidewalk vending in parks.** The City has not entered any concessionaire agreement with a third party vendor providing for the vendor's exclusive right to sell or offer for sale food or merchandise in City parks. Therefore, the proposed ordinance largely regulates sidewalk vending in parks according to the other requirements for vending within the City.
- **Grounds for revocation.** Consistent with state law, a permit may be revoked for the fourth or subsequent violation of the proposed ordinance.
- **Appeals.** Permit denials and revocations may be appealed to Council.
- **Penalties.** Consistent with SB 946, permit violations, including sidewalk vending without a permit, will only be punished by an administrative fine, and actual fee assessments will take into consideration a person's ability to pay the fine. Violators will also be notified of their right to request an ability-to-pay determination.

In addition to the above, the attached ordinance amends existing sections of the Hermosa Beach Municipal Code for consistency with the new chapter governing sidewalk vendors and in compliance with state law. Sections from Chapter 10.32 governing street vending have also been amended for clarity.

Summary of Proposed Resolution Amending the City's Administrative Fee Schedule

The schedule of administrative fines mandated by state law is as follows:

- A. Vending without a sidewalk vending permit will be punished by an administrative fine not to exceed the following amounts:
 1. \$250 for a first violation.
 2. \$500 for a second violation within one year of the first violation.
 3. \$1,000 for each additional violation within one year of the first violation.
 4. Upon proof of a valid permit issued by the Department of Public Works, the administrative fine assessed under this paragraph will be reduced to the corresponding administrative fine set forth in paragraph (B).
- B. Any other violations of Chapter 12.38 of the Hermosa Beach Municipal Code will be punished by an administrative fine not to exceed the following amounts:
 1. \$100 for a first violation.
 2. \$200 for a second violation within one year of the first violation.
 3. \$500 for each additional violation within one year of the first violation.
 4. The Public Works Director may revoke a sidewalk vending permit for the remainder of the permit's term upon the fourth or subsequent violations.

General Plan Consistency:

PLAN Hermosa (the City's combined General Plan and Local Coastal Program) was adopted in August 2017. The City recognizes and supports the need to maintain a strong, diverse and vibrant local economy. The proposed ordinance is supported by the following General Plan policies:

- Governance 6.5 Creative economy. Prioritize strategies that will create an economy full of diverse talents, trades and goods for the city. For long lasting economic success, a range of services, arts, entertainment and retail should be supported on all scales of the city's economy.
- Governance 6.6 Pop-up shops. Develop plans and programs for underutilized spaces, such as vacant buildings, utility corridors, parkways, etc., for temporary retail, restaurant, and community-promoting uses.
- Governance 6.7 Retail base. Encourage economic development reflective of the character of Hermosa Beach with small and medium retail development within Hermosa Beach in order to create a stronger tax base and increase the City's tax revenue.
- Land Use 1.7 Compatibility of uses. Ensure the placement of new uses does not create or exacerbate nuisances between different types of land uses.
- Mobility 7.1 Safe public right-of-ways. Encourage that all public right-of-ways are safe for all users at all times of day where users of all ages and ability feel comfortable participating in both motorized and non-motorized travel.
- Parks and Open Space 3.3 Commercial use of facilities. Regulate and enforce commercial use of City parks and open space to ensure activities do not impact general use and enjoyment.
- Parks and Open Space 7.3 Recreational asset. Consider and treat the beach as a recreational asset and never as a commercial enterprise.

Fiscal Impact:

Costs associated with issuance and administration of sidewalk vendor permits are proposed to be recovered through a fee, as outlined in **Attachment 3**. Staff recommends an initial application fee of \$325 and an annual renewal fee of \$325 in order to cover the administrative time for processing the permits. Revenue will be estimated once staff is able to determine the demand for the permit. There may be indirect impacts associated with additional enforcement, but those costs are not expected to exceed the City's current resources.

Staff recommends the adoption of the administrative fines, as outlined in **Attachment 2**. The main objective of the administrative fines is to encourage compliance, not to generate revenue. Any revenue associated with the administrative fines will be estimated once staff is able to determine the number of administrative citations.

Attachments:

1. Sidewalk Vending Ordinance
2. Sidewalk Vending Administrative Fine Resolution
3. Sidewalk Vending Permit Application and Renewal Fees Resolution.

Respectfully Submitted by: Kathy Shin, Assistant City Attorney

Concur: Lucho Rodriguez, Acting Public Works Director

Concur: Kelly Orta, Community Resources Manager

Noted for Fiscal Impact: Viki Copeland, Finance Director

Legal Review: Mike Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager