

City Council Meeting: April 9, 2019
Agenda Item: 7.C

To: Mayor and City Council
From: Rick Cole, City Manager, City Manager's Office, Administration
Subject: Comprehensive Sidewalk Vending Program and Emergency Ordinance

Recommended Action

Staff recommends that the City Council adopt an emergency ordinance updating Chapters 6.16 and 6.36 of the City of Santa Monica Municipal Code to establish a Comprehensive Sidewalk Vending Program, establish new definitions for sidewalk and vehicle-based vending, establish permit criteria and operating requirements to protect public health, safety, and welfare, enable City staff to issue administrative regulations for vending, and make other related changes.

Executive Summary

Sidewalk vending throughout California is now subject to a new state law. In Santa Monica, sidewalks and public paths of travel already play host to significant numbers of pedestrians including residents and nearly 9 million annual visitors from all over the world.

Santa Monica's residents and visitors encompass a wide range of physical abilities and may require paths of travel for wheelchairs or other mobility devices. Sidewalks represent critical paths for Fire and Police first responders seeking to access emergencies or move people out of danger. Sidewalks can also represent pathways to economic opportunity for micro-entrepreneurs seeking to vend food and wares to passing pedestrians and especially visitors—indeed, historians have observed evidence of the phenomenon of street vending in ancient Greece, Pompeii, China, and Mesoamerican cities.

To date, the City of Santa Monica has prohibited sidewalk vending in most locations citywide with only limited exceptions. However, Senate Bill (SB) 946 —prompted, at least in part, by a precarious federal enforcement landscape for immigrant workers—

demands that the City revise its laws and regulations related to sidewalk vending, and allow it to occur on most City sidewalks. The issue is not a straightforward one, as the presence of vending activity in our most crowded and high-traffic public spaces can place at risk public safety and health, potentially creating obstructions for pedestrians and emergency access routes. Accordingly, staff is proposing a comprehensive rewrite of the City's Municipal Code chapter related to vending to create a balanced sidewalk vending program that expands economic opportunity for those aspiring to vend lawfully, while placing limited regulations on vending to protect public health and safety in the community's most densely crowded locations and preserve the scenic character and recreational enjoyment of the City's parks.

Background

On September 17, 2018, then-Governor Jerry Brown signed SB 946 (Attachment A), which decriminalized street vending across the state of California. The stated intent of the legislation is to create entrepreneurial and economic development opportunities for immigrant and low-income communities; increase access to desired goods, such as culturally significant food and merchandise; contribute to a safe and dynamic public space; and promote the safety and welfare of the public by encouraging local authorities to support and properly regulate sidewalk vending.

Sidewalk vending is defined by SB 946 as selling food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. The law allows for both stationary (vending from a fixed location) and roaming (moving from place to place and stopping only to complete a transaction) vending.

Under the law, cities are not permitted to require sidewalk vendors to operate within specific parts of the public right-of-way, unless such a restriction is directly related to objective health, safety, or welfare concerns. A city may adopt requirements imposing certain regulations on the time, place, and manner of sidewalk vending, but may not regulate on the basis of economic competition or perceived community animus.

Permissible areas of regulation include:

Subject	Description
Hours of Operation	A city may limit hours of operation in commercial and residential zones if such limits are not unduly restrictive and are directly related to objective health, safety, or welfare concerns. In commercial areas, hours of operation cannot be more restrictive than other businesses in the same vicinity.
Areas of Operation	A city may restrict sidewalk vending in designated neighborhoods or areas if such restrictions are directly related to objective health, safety or welfare concerns. A city may prohibit stationary (but not roaming) sidewalk vendors in exclusively residential zones.
Number of Vendors	A city cannot limit the overall number of vendors, unless such a limit is directly related to objective health, safety, or welfare concerns.
City Parks	A city may prohibit stationary vending in a park where a city has entered an exclusive concessionaire agreement. A city may also regulate sidewalk vending in a park if (i) the regulation is directly related to objective health, safety, or welfare concerns, (ii) vending would impede the public's use and enjoyment of natural resources and recreational opportunities, or (iii) the regulation is necessary to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of a park.
Americans with Disabilities Act	A city may adopt regulations to ensure compliance with the Americans with Disabilities Act (ADA) and other disability access standards.
State and Local Agency Permits	A city may require a sidewalk vendor to obtain a permit or local business license from the city and to possess additional licenses or permits from other state or local agencies to the extent required by law, such as a California seller's permit or a permit from the LA County Department of Public Health for food.

History of Vending in Santa Monica

In September 1989, the City Council adopted Ordinance No. 1495 first regulating sidewalk vending in the City of Santa Monica. It permitted sidewalk vending at six specified locations in the Downtown area where vendors were selected by means of an annual lottery. Under the Ordinance, vendors were defined as those under special license agreement as part of the Promenade vendor cart program, under special license agreement on the Pier, at these six specified downtown locations, or as mobile, vehicle-based vendors. Sidewalk vending was prohibited in all other locations in the City.

In October 1997, the City Council further regulated vending by requiring all persons displaying any food, goods, written materials or merchandise in any public area, and making such goods available to the public free of charge, to visibly display a City-issued sign stating that all items displayed are available for free, with voluntary donations accepted. Furthermore, the City Manager was authorized to make accommodations for free-speech vending within the existing licensed vending cart programs or through other similar means.

For over three decades, vending carts on the Santa Monica Pier and Third Street Promenade have been an integral part of the visitor-serving commercial experience of these two highly popular destinations. The vending cart programs were established by the City to increase opportunities for entrepreneurs to establish small businesses in high profile locations they otherwise would not have access to, as these micro-businesses require a much smaller investment of capital in comparison with traditional storefronts.

The Third Street Promenade (TSP) cart program is operated under a Master Cart License on behalf of the City. The Master Licensee is permitted to sublease up to 32 independent cart operators and provides vendors with high quality carts as well as daily centralized management.

The cart program on the Santa Monica Pier consists of approximately 13 vendors with individual license agreements directly with the City. Cart operators on the Pier are responsible for providing their own carts that are compliant with the City's aesthetics, size and safety requirements. The limited number of carts available under the Pier's vending program is due to the space limitations and safety regulations on the Pier. Specific cart locations were established by the Fire Chief to ensure carts would not impede with access or egress from the Pier or block fire hydrants, standpipes, and firefighting equipment in the event of an emergency. Locations were also designated as to not conflict with other functions and activities such as street performers who are similarly required to operate from designated locations under the City's public safety authority to regulate time, place and manner.

Both vending cart programs contain rules and regulations and include requirements to maintain business licenses, commercial liability, workers compensation insurance, and health department permits, if vending food.

Following the passage of SB 946, staff from the City Manager's Office, Community and Cultural Services, Planning and Community Development, the Police Department, Finance Department, Housing and Economic Development and the City Attorney's Office began meeting to assess the impacts of SB 946 and worked to craft a permitting program that balanced expanding economic opportunity while protecting the public's health and safety.

Discussion

In developing a comprehensive ordinance to permit and regulate sidewalk vending in Santa Monica, staff have sought to strike a balance among a number of different objectives and priorities that are critical to the City. Above all, the recommended approach places public safety as the highest priority—including protecting public health, mitigating risks of fire and protecting emergency evacuation routes, minimizing obstruction of access in the public right-of-way, and managing crowds at the City's most iconic and high-traffic public spaces. This aligns with the Council's identified Framework priority of Keeping Neighborhoods Safe and other aspects of the Safety outcome area of the Council-adopted Framework that guides all of the City's work.

Meanwhile, the recommended policy also reflects the notion that a safe, well-regulated sidewalk vending program would represent an expansion of economic opportunity, particularly for immigrant workers whose livelihoods have in some cases been imperiled by federal immigration enforcement policies in recent years. This aspect of the policy reflects the Economic Opportunity Framework outcome area, and its Inclusive Economy and Business Diversity sub-outcomes. In addition, the Council named Equity and Inclusion among core City values at its January 26, 2019 retreat. Moreover, on February 28, 2017, the Council adopted a resolution on "Embracing Diversity [and] Rejecting Hate and Discrimination" (Attachment B) underscoring the City's firm commitment to

protecting immigrant families in Santa Monica and affirming the economic, social, and cultural contributions of residents of every national origin and immigration status.

In aiming to balance these factors, the sidewalk vending policy recommended by staff is guided by five vital objectives. The ordinance and envisioned regulations are designed to: (1) Be a reasonable exercise of the City's charter city police powers while remaining consistent with the requirements of SB 946; (2) Prioritize public health and safety; (3) Protect the scenic and natural character of the City's parks; (4) Expand economic opportunity for those who aspire to vend lawfully and with appropriate permits in the City; and (5) Be meaningfully enforceable.

Timing and Approach

Staff is submitting its recommendation as an emergency ordinance to address immediate public safety and public health concerns, particularly those related to ongoing unpermitted and unregulated vending activity occurring on and around the Santa Monica Pier. Specifically, the deck and stairs abutting the northern side of the Pier have become overcrowded with unpermitted vendors in recent months causing significant access obstructions, while multiple fights have broken out among vendors battling over turf there resulting in numerous arrests. Proceeding via emergency ordinance would ensure that the new law and any associated regulations take effect immediately, giving staff the ability to address vending-related safety concerns by beginning implementation, installation of signage, and warnings against unlawful activities right away, in advance of the start of the busy summer tourist season. At the same time, this would also allow outreach and education to aspiring vendors to immediately ramp up, opening the pathway for permitted and lawful vending in compliance with the new law and regulations.

As further detailed below, the staff-recommended Emergency Ordinance articulates and updates key definitions of stationary and roaming sidewalk vending, as well as mobile or vehicle-based vending, in Santa Monica, lays out overall parameters and requirements for vending, and sets forth prohibitions or restrictions for particular locations including the Pier, beach, Third Street Promenade, and Palisades Park. Many detailed rules and

regulations for vending, including permitting, design, operational, and general location requirements, will be reserved for Administrative Regulations that will be issued by the City Manager or his designee shortly after any Ordinance is adopted by Council. This approach will provide staff flexibility to regularly refine the particulars of vending regulations in response to health and safety concerns related to conditions on the ground, seasonal variation in the volume of tourists and vending activity, and other considerations that arise as the sidewalk vending program is implemented.

Location-Specific Regulations

Santa Monica Pier

The Santa Monica Pier is a 1,080-foot-long narrow, wooden pier extending over the Santa Monica State Beach and Pacific Ocean with limited points of egress and ingress. Indeed, there are no exits for the seaward 540 feet of the Pier's length. Its roadway, walking paths and fire lanes are heavily utilized by pedestrians, street performers, free speech advocates, fishers, and licensed vending carts and kiosks. As an iconic and historic destination, the Pier has always attracted large crowds; however, the number of visitors to the Pier has grown exponentially following the arrival of the Expo light rail station, and the Pier is heavily congested throughout the year at all hours of the day and evening. The Pier's design is particularly unsuitable for vending operations outside of the designated locations managed through the City-administered Vending Cart Program. A single vendor selling wares or food from a non-designated location could substantially impact the path of travel on the roadway or walking path on the Pier and impede access or egress of pedestrian traffic and emergency personnel.

For years, despite ongoing enforcement efforts, unpermitted vending activities have resulted in safety and health hazards on the Pier, including blockages of paths of travel; obstruction of evacuation exits, staircases, staircase landings and ADA ramps; the use of open flame on and adjacent to the wooden pier; and the sale of unhygienic and adulterated food products (See photos provided as Attachment C). Other safety concerns observed include threats and intimidation between the public and unpermitted vendors, aggressive conduct directed towards public safety personnel, and fights between vendors asserting claims over disputed turf. These hazards have resulted in

injuries and illnesses from unsafe food handling, inhibited pedestrian movement, and obstructed access, and the conditions reflect a particularly serious threat to public safety in the event of an emergency and mass evacuation of the Pier.

Accordingly, staff recommends that the Ordinance prohibit vending on the Pier, Pier Bridge, the beach immediately adjacent to or under the Pier, and within 100 feet of any entrance or exit to the Pier or Pier Bridge including stairs, ramps, elevators, and plazas, with the exception of locations designated and managed under a City licensed program.

Parks

Prior to SB 946 establishing statewide vending laws, all vending in Santa Monica parks and at the Santa Monica State Beach had been prohibited since 1989, with the exception of businesses with executed beach concessions agreements and instances when vending was temporarily allowed with an approved community event permit. Vending approved under a community events permit was restricted to the defined event site and could not block pedestrian pathways. Event vendors were also required to obtain a State Board of Equalization seller's permit and Los Angeles County health permit, as applicable.

Following the implementation of SB 946, staff recommends adjustments to regulations for vending in City parks and at Santa Monica State Beach. Vendors would be required to obtain all applicable city, county, and state licenses and permits; the size of vending conveyances would be reasonably limited; and they would be responsible for disposing of all waste resulting from their businesses' operations and sales. Stationary vendors would be prohibited from conducting business at any park with an exclusive concessions agreement, during the hours that the City concessionaire is open for business. Furthermore, certain types of vendors would be prohibited from designated locations, including all vendors on bicycle and vehicular pathways and in parking lots. If Council approves the proposed ordinance, Staff expects to promptly promulgate administrative regulations to further limit vending within specified distances of buildings, recreation centers, playground areas, athletic fields, permitted classes and events, and public art, to ensure the public's use and enjoyment of recreational facilities.

Palisades Park: Staff recommends a prohibition on stationary vending in the area of Palisades Park within 500 feet of the Ocean Avenue entrance point to the Pier Bridge, to preserve the scenic and natural character of the park and to protect public safety.

Palisades Park, situated between the Pacific Ocean, the Pier Bridge, and the City's bustling downtown, is the crown jewel of the City's park system and is its most heavily utilized. The park is located on the west side of Ocean Avenue, extending one and a half miles from Colorado Boulevard on the south to Adelaide Drive and Santa Monica Canyon in the north. It sits along the edge of the bluffs overlooking the ocean, providing spectacular views of the coastline. It stretches over 14 blocks with only one break, at the California Incline, but is extremely narrow in width and consequently, the entire park is only approximately 26.4 acres in size. Based on Palisades Park's unique aesthetic qualities, the City's Local Coastal Program Land Use Plan requires that views to, from, and along the Park be protected and the City's Landmarks Commission designated Palisades Park as a landmark in 2007.

Given the Park's prime location and aesthetic appeal, it consistently experiences an extraordinarily high level of activity, including, but not limited to, a high volume of park patrons; running clubs; buses transporting passengers to the park, Pier, Beach, and the Downtown; food trucks; and various street performers. As demonstrated in the photos included in Attachment C, large crowds often congregate in this area of the park and any additional activity—especially those for which people could be queueing in lines—could result in hazardous conditions. During the busiest days of summer, staff have observed spectators standing in the bike lane of Ocean Ave. to watch street performers, while other people have been observed stepping off the sidewalk onto Colorado Ave. or the Pier bridge in the path of oncoming vehicular traffic to bypass large groups of pedestrians. A July 2017 traffic study observed more than 19,000 pedestrians and bicyclists—or nearly 80 per minute—crossing the intersection at Ocean and Colorado Avenue adjacent to Palisades Park and the Pier ramp in a four-hour period (1:00pm – 5:00pm), in addition to nearly 8,000 vehicle crossings. In addition, hundreds of tour bus passengers are dropped off and picked up daily in the loading zones on Ocean Avenue

immediately adjacent to the southernmost 500 feet of Palisades Park. Many of those exiting the buses walk from the loading zones across the park to the Camera Obscura building restrooms or to the Pier and beach. Accordingly, prohibiting stationary vending in this limited portion of Palisades Park would protect public safety, allow emergency personnel to manage the existing congestion at this bottleneck, and preserve the park's scenic and natural character, ensuring residents and visitors can continue enjoying its inimitable views of the Pier, beach, and ocean.

Santa Monica State Beach: Santa Monica Beach is the most heavily used beach in Los Angeles County, visited by 18 million people annually, and offers a wide variety of free recreational activities including volleyball, swimming, surfing, and biking, as well as the heavily used Muscle Beach, parks and playgrounds. County Lifeguards staff 23 towers along the beach and respond to emergencies in the water and on the beach. Beach Maintenance, Police, and Fire all travel in vehicles on the beach as part of regular maintenance and patrol functions. To minimize commercialization and disruption of recreational activities, and to ensure necessary maintenance and public safety access, staff recommends the Ordinance prohibit stationary vending on the beach.

Ocean Front Walk is heavily traveled by many of the 100,000 people who enjoy the beach on a typical summer day, and its 1600 and 1700 blocks are commonly congested with visitors attracted by the dining options, Muscle Beach, volleyball courts, Chess Park, and public restrooms, and traveling to or from the Beach, Pier, parking lots, and beachfront hotels. Ocean Front Walk is also frequently used by police and fire vehicles when responding to emergencies. The 1600 block is within 100 feet from several entrances to the Pier, and thus within the Pier buffer zone where staff is recommending prohibiting all vending. Additionally, staff recommends that stationary vending be prohibited from the 1700 block of Ocean Front Walk.

It should be noted that the State continues to prohibit all vending on all State owned and operated beaches.

Third Street Promenade and the Transit Mall: Much like the Pier, the Third Street Promenade—a three-block long, mixed-use retail district, walled on both sides by commercial structures with a center roadway closed to vehicles—is a popular destination that attracts a high volume of visitors. The crowds on the Promenade are unpredictable in size, and often huge. Counts undertaken by safety personnel have documented crowds as large as 10,000 per block or more. The Promenade has an abundance of streetscape improvements such as street furniture (benches, planters, bike racks, trash cans), fountains, sculptures, wheelchair ramps, lights, trees and landscaping, map cases, fire hydrants, bollards, outdoor dining areas and pavilions. Additionally, there are numerous business entrances, vending carts established under the City's Master Cart License program, street performers and free speech advocates, and special events and temporary public art installations. Likewise, the Transit Mall sidewalks, which cross the Promenade, are relatively narrow spaces dotted with street improvements and amenities that enhance the space but also limit the flow of pedestrian traffic. These improvements include trees, transit shelters and arbors, light standards, street furniture, trash receptacles and water fountains. The Transit Mall sidewalks are bounded on one side by building walls and on the other by very busy streets carrying an unusually high number of buses in addition to typical southern California vehicle traffic. Stationary vending would impede the flow of pedestrian traffic, inhibit emergency egress, and obstruct police and fire emergency access. Thus, staff recommends prohibiting stationary vending within 25 feet of the Promenade and on the Transit Mall, while allowing roaming vending subject to requirements set forth in the Administrative Regulations.

Facilitating Opportunities for Permitted Vending

Staff is working on a number of fronts to ensure the creation of accessible pathways to economic opportunity for sidewalk vendors who seek to comply with the City's new ordinance and regulations on vending, and obtain required City and county permits. To ensure that pertinent information is accessible to all vendors, staff is creating a dedicated website specific to vending in Santa Monica that will include application details, links to applicable new and existing city ordinances, the forthcoming vending administrative regulations, and Frequently Asked Questions. Additionally, the Finance

Department will host a series of small pre-application workshops to assist vendors with the new permitting process (discussed in greater detail below). These workshops will help potential vendors navigate and complete the business license and vendor permit application, and provide educational material about the administrative regulations. Materials and assistance will be available in Spanish and English. Each workshop will include a high level overview of the applicable regulations, application procedures and an overview of the criteria that will be used to evaluate the applications.

In addition, staff intends to actively encourage and facilitate lawful vending to occur in desirable and permissible locations that would be economically attractive to vendors, in particular the Colorado Esplanade. Given its wide, accessible sidewalk, and its high volume of pedestrian and tourist traffic traveling between the Expo Line terminus and the Pier and beach, the south side of the Esplanade holds great potential as a desirable, lucrative area for sidewalk vending without the safety and access concerns of the Pier and its immediate surroundings. Staff will seek to direct permitted vendors to the Esplanade and other areas without restrictions under the City's ordinance, working with stakeholders and partners to advance a vision of the Esplanade as a uniquely dynamic, activated public space that could play host to a global vending "bazaar."

Also, staff will continue working with the Los Angeles County Department of Public Health (DPH) to solicit its partnership in lowering barriers to entry for the permitting of food vendors while maintaining public health and public safety. Efforts under discussion include the possibility of mobile inspection and permitting days, where DPH inspectors could come to Santa Monica to inspect vendor applicants' carts and supplies, and potentially issue permits in the field, as well as work with cart manufacturers to expand the options and price points of vending carts that can meet DPH requirements.

Enforcement

In compliance with SB 946, enforcement against pedestrian vendors operating on public sidewalks, pedestrian paths, and within parks will generally be administrative in nature. SB 946 allows for an administrative fine structure of up to \$250 for the first offense, up to \$500 for the second offense and up to \$1,000 for the third offense (within one year).

If the Council adopts the proposed ordinance, staff intends to return to Council promptly, likely through the FY2019-21 budget process, to recommend adoption of a specific administrative fine schedule. Until such time, vending violations will be subject to the City wide default fine of \$75 for the first offense, \$93.75 for the second offense, and \$112.5 for the third offense. SB 946 generally precludes the imposition of criminal penalties against pedestrian vendors operating on public sidewalks, pedestrian paths, and within parks. Upon passage of SB 946, the City Attorney's Office proactively dismissed pending criminal vending cases and ceased filing any such criminal cases. Previous convictions are also eligible for dismissal.

In FY 2013-14 the Code Enforcement Division assumed primary enforcement responsibility on the Pier and beach. Since then, the cost of one full-time Code Enforcement Officer position is reimbursed annually from the Beach Fund for beach related enforcement duties. The Pier/beach enforcement detail included two full-time Code Enforcement Officers and one Lead Code Enforcement Officer. In approximately May 2015, the Lead Code Enforcement Officer position was reassigned back to general code enforcement duties while the two Code Enforcement Officers assigned to the Pier/beach enforcement detail continued until May 2016. To satisfy the ongoing obligation to provide primary enforcement duties on the beach, beach enforcement was absorbed into Code Enforcement Area 6, where currently two Code Enforcement Officers are assigned.

With the expansion of vending in response to SB946, enforcement has become more challenging. Yet effective enforcement is crucial to the success of the new approach to vending citywide. A new Vendor Enforcement Program could include a wide range of options including citywide enforcement of roaming and street vendor regulations, including the beach, Pier and Promenade, and food truck regulations. Because of the extreme transitory nature of vending, enforcement could include any combination of the following:

- Verbal Warnings
- Written Notice

- Administrative Citations
- Confiscation of unlawfully vended items if authorized
- Referral to SMPD for any related criminal activity, including but not limited to:
 - Human Trafficking
 - Organized Crime (RICO)
 - Child Labor
- Referral to Los Angeles County Wage Enforcement Task Force
- Other enforcement opportunities that may not yet be identified

It is anticipated that vendor enforcement on the Pier will be crucial due to the appeal and profitability of vending on and around the Pier. As such, staff intends to restore a dedicated Code Enforcement detail at the Pier and Beach that would maintain primary enforcement responsibility of the vending ordinance and regulations. This dedicated Pier and Beach resource would also encompass enforcement of performer regulations including the performer lottery process, along with Pedi-Cabs and surf and fitness instructor enforcement. The Code Enforcement Division estimates that a minimum of two Code Enforcement Officers will be needed for effective Pier and Beach Enforcement. To accomplish this goal, the Code Enforcement Division is assessing existing staffing resources, the redistribution of responsibilities, reallocation of resources, and what trade-offs can be utilized to re-establish effective enforcement presence at the Pier. The new Vendor Enforcement Program will also include options to adjust enforcement levels as necessary depending on the day of week and time of day. The Code Enforcement Division will conduct an evaluation of the appropriate enforcement staffing levels to ensure staff safety and enforcement effectiveness.

Additionally, a component of the upcoming reorganization of the Santa Monica Police Department (SMPD), under Chief Cynthia Renaud, includes the redirection of strategic police resources to help manage the Santa Monica Pier and adjacent areas. This strategy will incorporate both the Pier and its adjacent coastal areas into the focused framework of SMPD's Downtown Services Section (DSS). Since its development, DSS has been working with local businesses and stakeholders towards a partnership in

public safety which is specific to the downtown area, Esplanade, and transit mall. In supplementing the expansion and scope of DSS, a supervisory spot was created to focus and direct police resources specific to the pier which will involve support to Code Enforcement's primary enforcement responsibility of the updated vending ordinance and regulations. SMPD has already launched a separate effort focused on ensuring compliance with Municipal Code and State Fire Code sections prohibiting impeding access and obstructing traffic flow on and around the Pier steps, wooden landing, and access ramp to ensure public safety and maintain clear ingress and egress.

Amendment to the Vending Ordinance

Vending in the City is regulated under Chapter 6.36 of the Municipal Code, which currently allows vending in the public space when done in conjunction with a vehicle or in conjunction with a community event. Furthermore, existing law explicitly prohibits sidewalk vending, with certain narrow exceptions, such as activities otherwise protected by the First Amendment. To meet the new state mandated regulations established under Government Code Section 53036-53039, the City must amend SMMC Chapter 6.36 to establish local regulations for sidewalk vendors. Staff recommends that the City Council approve the proposed amended ordinance to address sidewalk vending and modernize existing vehicle vending regulations.

Specifically, the new ordinance will address the following:

- 1) Establish new vending definitions;
- 2) Require a permit to engage in sidewalk vending;
- 3) Outline the content of the permit application including, but not limited to:
 - a. Proof of compliance with applicable county and state requirements,
 - b. Detailed information regarding sidewalk vending restrictions, including merchandise, location, time, and operation size.
- 4) Establish criteria for the issuance, suspension, revocation and denial of a sidewalk vendor permit;
- 5) Establish operating requirements that ensure public health, safety and welfare, including compliance with the American with Disabilities Act of 1990;
- 6) Establish the ability for City staff to draft administrative regulations for all vending operations;

- 7) Repeal Section 6.36.110 of SMMC regarding sampling on the Pier and Third Street Promenade. Staff recommends that all sampling activities comply with the proposed vending regulations to ensure that highly popular tourist destinations maintain adequate access to the public right of way, eliminating the need for a separate sampling permit program;
- 8) Prohibit vending of shared mobility devices. Due to the influx of shared mobility devices in the city, staff believes prohibiting the vending of shared mobility devices will reduce unlawful use of such devices.

Sidewalk Vendor Permit Program

Staff proposes the establishment of a regulatory permit program for sidewalk vendors that will require sidewalk vendors to obtain a business license and sidewalk vendor permit. The proposed program also authorizes the establishment of administrative rules and regulations to govern sidewalk vending activities, including time, place, and manner of permitted sidewalk vending, application requirements, operational standards, and enforcement actions, such as suspension and revocation of sidewalk vending permits.

In addition to collecting standard information required from all business license applicants, sidewalk vending applicants will be required to provide detailed information regarding their operations, including merchandise, location, time, and operation size. As part of the application process, applicants must provide proof of compliance with applicable county and state requirements, such as the Los Angeles County Health Permit for food vendors and California Seller's Permit.

As proposed, the Ordinance will provide the City's Risk Manager with authority to impose insurance requirements on vendors. However, it is not the City's intention to require insurance for vendors engaging in low risk activities (e.g. vending prepared foods, clothing, sundries, etc.), in order to make the program as accessible as possible to those seeking to vend lawfully. This policy will be revisited from time-to-time and amended as necessary should circumstances change.

Permitting Program Costs

The Finance Department's Business License Unit is responsible for the administration of the City's Business License Program and will be responsible for the coordination of sidewalk vendor permits that will be issued in conjunction with business license certificates. The Finance Department proposes that the existing vendor permit fee apply to sidewalk vendor permits as well. Once data is available to examine the cost of administering the City's sidewalk vendor permit program, City staff will reevaluate permit costs and may propose updating this existing fee. Below is a table of the proposed taxes and fees for FY 2018-19.

Tax/Fee Description	Amount	Authority
Business License Tax	\$50.00	SMMC 6.36.050(d)
Vendor Permit Fee	\$103.96	SMMC 6.36.040(c), Resolution XXXXX
CASp State Mandated Fee	\$4.00	California Government Code 4467
TOTAL	\$157.96	

Program Schedule

Due to the expected influx of sidewalk vendors in the spring and summer months, staff recommends the proposed program schedule:

Program Task	Start Date
Stakeholder Engagement	January 2019
Administrative Regulations Issued	April 2019
Vendor Education re: Permitting Program and Restrictions	April 2019
Application Intake	May 2019
Enforcement of Restrictions	May 2019
Communications & Outreach Campaign	May 2019

Stakeholder Engagement Process

Business and Pier Stakeholders

In January 2019, staff held an informational meeting for Downtown Santa Monica Inc., Santa Monica Chamber of Commerce, Pier Corporation and Pier Lessees, and other Business Improvement District representatives to educate them on SB 946 and staff's approach to creating an ordinance and permitting program. Staff hosted Victor Narro,

from the UCLA Labor Center, to provide a balanced perspective about the circumstances that led to the enactment of SB 946. Narro shared that sidewalk vending is a \$504 million industry in Los Angeles, with 50,000 street vendors operating in the City of Los Angeles annually. A coalition of street vendors and advocates worked tirelessly for eight years to lobby the City of Los Angeles to decriminalize street vending and establish a regulatory system. That initiative evolved into statewide advocacy in 2018. Staff has also presented at meetings for the Pier Vending Cart Association, Downtown Santa Monica Inc. Board, and Pier Corporation Board .

Recreation and Parks Commission

Staff presented the proposed restricted locations and approach to regulating vending at the parks and beach to the Recreation and Parks Commission on February 21, 2019. The commission voted unanimously to support staff's recommended approach to regulating vending and, during their discussion, expressed concerns related to preserving the natural beauty of the parks and beach and ensuring vendors do not interfere with park and beach users enjoying the City's open spaces.

Vendor Town Hall

Additionally, City staff held a Town Hall on March 13, 2019 to inform current and potential vendors of the changes in state law and potential permit opportunities and restrictions under development locally. Over 100 current and potential vendors attended the meeting and provided important feedback. The Town Hall was held in both English and Spanish, to ensure the majority of vendors would not face a language barrier. Overall, vendors vocalized concerns about prohibiting vending on the Pier, primarily because it is a busy and lucrative market for such activity. In addition, some vendors raised the concern that even if they were to comply with a new vending prohibition on the Pier, new vendors would attempt to vend on the Pier. Staff plans to conduct further forums and workshops to inform and develop ongoing dialogue with permitted vendors as well as welcome new vendors, ensuring they are informed on the details of the new regulations and how to comply, pending Council approval.

Potential Office of Civic Wellbeing Microgrants

Staff presented a preview of the proposed ordinance and permitting program at a Pico Wellbeing Project Planning workshop on February 28, 2019. Attendees were generally supportive and particularly interested in what the City could do to enhance the economic opportunity of Santa Monica residents who wish to vend lawfully in the City but may face economic barriers to doing so. Staff have initiated discussions with the Office of Civic Wellbeing to identify such opportunities, one of which could be a future round of microgrants that could be directed at start-up and permitting costs for vendors who wish to obtain a permit and vend lawfully in Santa Monica.

Communications and Outreach Plan

In rolling out the new sidewalk vending program, the City will develop a robust outreach strategy to educate consumers, vendors, and established businesses about the new laws and regulations. The plan will include the creation of a bilingual public information campaign that includes a mix of print, digital, and outdoor ad placements which can collectively accomplish the following objectives:

1. Establish awareness of the City's program among residents, brick-and-mortar businesses, and visitors;
2. Encourage aspiring sidewalk vendors to vend lawfully and participate in our permitting program; and
3. Educate residents and tourists to look for decals displayed by sidewalk vendors permitted to vend in Santa Monica

The plan will include efforts to promote the launch of the new program and requirements in spring, and to maintain awareness in perpetuity. As part of the rollout, the City will look to deploy simple, eye-catching pocket guides to explain the restrictions and features of the new regulations, in order to effectively communicate with vendors as well as visitors who may speak a wide variety of languages. City staff are actively exploring partnering with or building upon successful public education and outreach campaigns already deployed or underway in other major municipalities that have tackled the sidewalk vending issue, including New York and Los Angeles.

Evaluation and Follow-Up

Due to the major changes mandated by SB 946, California communities will be a laboratory for the evolution of street vending in our state. Along with adjacent Venice, Santa Monica will be one of the highest profile locations testing these new policies. Staff intends to continually monitor the application and enforcement of the proposed ordinance in order to track unforeseen or unintended concerns and fine-tune our approach to address them as they arise. We will also carefully monitor the best practices that emerge from other communities and the feedback from local residents, businesses, and visitors. This may result in future amendments to the regulations, staffing, or ordinance. Staff also intends to conduct a more formal evaluation of the program after 12 months which may lead to additional changes.

Alternatives / Additional Direction

Should Council decide against adopting the staff recommended ordinance and approach to regulating vending in the City, there are a number of available alternatives, each of which would have different implications going forward:

- *Decline to Create Permitting Program/No Regulations* – Council could opt to not create a sidewalk vending permitting program in the City. Under this scenario, SB 946 dictates that the City would not be able to regulate the time, place, or manner of sidewalk vending activities, which would be permissible Citywide without restriction. This would minimize staff resources to administer and enforce a permitting program, but inhibit our ability to manage our most crowded spaces and protect public safety and health.
- *Expanded or Reduced Areas of Prohibition or Regulation* – Council could amend the staff-recommended scope of restrictions on vending activities. For example, Council could enact blanket prohibitions on all vending in Palisades Park and/or on the Third Street Promenade, instead of the more tailored regulations staff is recommending; such an approach would require a showing that such legislation is necessary and directly related to objective health, safety, or welfare concerns. Alternatively, Council could scale back the staff-recommended restrictions, such as the full prohibition on and around the Pier, allowing greater degrees of vending in high-traffic, sensitive public spaces. Needed enforcement resources

would increase or decrease in parallel with any Council amendments to expand or reduce the scope of vending restrictions.

- *Special Vending Districts* – As an additional measure to expand regulated sidewalk vending in key sensitive locations, Council could direct staff to work with vendors and advocates to explore creating “special vending districts” in areas such as the Pier and Third Street Promenade, including designated zones, systems to allocate specific slots or spaces, and models of self-regulation with vendor leaders. Advocates with the L.A. Street Vendor Campaign are promoting this model as a way to reopen vending opportunities in zones that Los Angeles has declared “no-vending zones” in its vending ordinance. This effort would require additional staff resources to develop and administer.

Financial Impacts and Budget Actions

There is no immediate financial impact or budget action necessary as a result of the recommended action. Staff will actively monitor the issuance of street vendor permits and adjust revenues during the FY 2019-20 Midyear budget, as needed based on the volume of permits issued.

Enforcement

The Code Enforcement Division will assess the appropriate enforcement staffing levels to ensure Officer safety pending the adoption of the City’s ordinance, including but not limited to upgrading or reassigning Code Enforcement Officers. Code Enforcement anticipates a need of two to four Code Enforcement Officers for the program depending on the urgency and outcomes staff is expected to achieve. The City Attorney’s Office works in close coordination with both Code Enforcement and SMPD in enforcing all of the City laws, including this new comprehensive vending program. The City Attorney’s Office will closely monitor case referrals generated from this new enforcement program to assess adequacy of attorney resources.

Outreach


Staff will initiate ongoing outreach necessary to inform vendors and the public about SB 946 and the specifics of Santa Monica’s new ordinance and program, using available

one-time funds of \$40,000 to develop and launch a vendor and public education campaign, print decals, and a multi-lingual toolkit. Staff will return to Council for any ongoing costs necessary to maintain the program.

Prepared By: Stephanie Venegas, Council Office & Legislative Affairs Liaison

Approved

Forwarded to Council


Rick Cole, City Manager 4/2/2019

Attachments:

- A. SB 946-Sidewalk Vendors
- B. r-11028
- C. Vendor Photos
- D. CMO - Emergency Ord - Vending - 04.09.2019