



Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

**FROM: David Sykes
Richard Doyle**

**SUBJECT: Actions Related to Mobile
Vendors**

DATE: September 25, 2019

RECOMMENDATION

(a) Approve an ordinance amending Chapter 6.54 of Title 6 of the San Jose Municipal Code (The Peddler Permit Ordinance) to conform to State law; and

(b) Adopt a resolution amending the Administrative Citation Schedule of Fines to establish and revise existing fines in accordance with State law for certain violations of Chapter 6.54 of Title 6 of the San José Municipal Code (The Peddler Permit Ordinance), and repealing Resolution No. 78934.

BACKGROUND

On September 17, 2018, Senate Bill 946 (SB 946) was signed by Governor Brown. SB 946 requires cities to allow sidewalk vending commencing January 1, 2019. Under the new law, the state mandates local jurisdictions to support and facilitate sidewalk vendors.

Sidewalk vending is defined by SB 946 as a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. State law allows for two types of sidewalk vendors, stationary (a person who vends from a fixed location) or roaming (a vendor who moves from place to place and stops only to complete a transaction).

The more significant regulations from the law that affect how the City can regulate vending on sidewalks include:

- Cities cannot restrict roaming or stationary sidewalk vending in commercial zones unless restrictions are directly related to objective health, safety, or welfare concerns. In residential areas, only stationary vendors can be restricted.
- Cities cannot prohibit roaming vendors from operating in City-owned parks, but may prohibit stationary vendors, if under contract with a concessionaire.

- In commercial zones, hours of operation cannot be more restrictive than other businesses on same street. Placement of hours restrictions is permissible in residential zones.
- Cities cannot limit the number of vendors or restrict them to certain areas of the City.
- Cities cannot impose criminal penalties for violators of vending regulations. Instead, violations may only be punished with administrative citations in amounts specified in the law.

SB 946 does allow for cities to adopt some requirements regulating the time, place, and manner of sidewalk vending, if the requirements are directly related to health, safety or welfare concerns. The bill also is clear that perceived community animus or economic competition are not valid health, safety, or welfare concerns to justify the imposition of time, place, or manner restrictions.

In May of 2019, staff presented recommendations on the implementation of updates to Chapter 6.54 of Title 6 of the San Jose Municipal Code (The Peddler Permit Ordinance) to the City Council's Community and Economic Development Committee (CEDC). CEDC accepted staff's report and now staff is proceeding with the recommendations to City Council.

ANALYSIS

The City Manager's Office, Police Department and City Attorney's Office have reviewed Chapter 6.54 (Peddler Permit Ordinance) of the San Jose Municipal Code (SJMC) and are recommending revisions to the ordinance to conform it to State law. The Peddler Permit Ordinance regulates three types of peddlers: approved location peddlers (analogous to stationary sidewalk vendors in SB 946), mobile unit peddlers (analogous to roaming sidewalk vendors in SB 946), and motor vehicle-based peddlers (e.g. food trucks, or other persons vending from vehicles requiring a license to operate from the DMV, which are not covered by SB 946).

Changes in the proposed ordinance to conform to SB 946 include:

- Peddling in a residential zone is limited to the hours of 9:00 a.m. to 5:00 p.m. Pacific Standard Time and 9:00 a.m. to 7:00 p.m. Pacific Daylight Time.
- Food peddlers must possess and display valid permit from the County of Santa Clara Department of Environmental Health and comply with all food preparation and fire codes.
- Restrictions from peddling within 500 feet of City-permitted temporary special events, such as street fairs, festivals, or parades; schools during hours of operation; or permitted certified farmers' markets or swap meets.
- Restrict approved location peddlers from vending in areas zoned exclusively residential.
- Requirement of proper trash disposal.

- Requirement that peddlers must meet ADA accessibility requirements.

Additionally, the “Arena Peddling – Prohibition Zone” has been removed from Chapter 6.54. Instead, the draft ordinance restricts peddling within 500 feet of SAP Center, Avaya Stadium, the Municipal Stadium, and the Convention Center on event days because of the impacts to pedestrian and peddler safety due to overcrowding on sidewalks, which results in pedestrians walking in the street and along the sidewalk to keep moving forward. These venues also experience a high amount of traffic on event days, affecting the safety of pedestrians and motorists, due to a high concentration of visitors at one time.

Pursuant to SB 946, the tools for enforcement of violations of sidewalk vending regulations are limited to the issuance of administrative citations. As criminal citations are no longer available enforcement mechanism, any City employee could be designated to issue administrative citations to enforce sidewalk vending violations. The proposed ordinance addresses these mandated restrictions on penalties. SB 946 dictates the maximum amounts and specifies that no additional fines or penalties may be assessed, including for failure to pay an administrative citation. The proposed revisions to the Administrative Citation Schedule of Fines will set the fines at the maximum amounts allowed under State law.

Per State law, the City may only issue administrative fines based on the following penalty structure when no permit is required:

- Maximum of \$100 for a first violation
- Maximum of \$200 for a second violation within one year of the first violation
- Maximum of \$500 for each additional violation within one year of the first violation.

The penalty structure for operating without a permit (when a permit is required) is as follows:

- Maximum of \$250 for a first violation.
- Maximum of \$500 for a second violation within one year of the first violation.
- Maximum of \$1,000 for each additional violation within one year of first violation.

Further, once a citation is issued, the City is required to consider the person’s ability to pay including if the person is a recipient of certain government benefit or if their income is below poverty level then the City must accept payment in the amount of 20% (of the fine amount) as full satisfaction.

The proposed ordinance also allows for the City Manager to promulgate additional time, place, and manner regulations for peddlers that conform to the criteria of SB 946. There are already existing regulations promulgated for approved location peddlers, but, if need be, the City Manager could promulgate additional regulations for other types of peddlers or for specific locations (e.g. parks).

With respect to implementing the proposed ordinance, at times, it may be necessary to conduct enforcement of mobile peddlers when their presence causes a health, safety or public welfare concern such as impeding pedestrian flow in the public right of way. The Administration is working to identify the appropriate enforcement mechanism and resources available for these instances. Code Enforcement Inspectors will be utilized as available to move vendors along and issue administrative citations, if necessary. The enforcement effort would be focused on identified special events where mobile vendor activity and safe right of way concerns have been prevalent. It is anticipated that overtime compensation would be required to support this effort since special events are often held in the evenings, weekends, and during the holidays. The San Jose Police Department may be asked to assist Code Enforcement in situations that escalate to a public safety matter.

PUBLIC OUTREACH

The Office of Immigrant Affairs and Office of Economic Development sent the ordinance information flyer (Attachment A) to 35 community-based organizations potentially involved with residents in the mobile vendor community, soliciting questions or concerns. The Office of Cultural Affairs sent the same information flyer to approximately 45 organizations, including special event organizers who conduct events in downtown San Jose, to downtown venue operators, and local businesses.

COORDINATION

This memorandum has been coordinated with the Police Department, the Office of Cultural Affairs, the Office of Economic Development, and the Department of Parks, Recreation and Neighborhood Services.

CEQA

Not a project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/
DAVID SYKES
City Manager

/s/
RICHARD DOYLE
City Attorney

For questions please contact Lt. Scott Johnson, at 408-537-1677, or Terra Chaffee, Sr. Deputy City Attorney, at 408-535-1900

"Attachment A"

Requirements for Mobile Sidewalk Vendors

Implementing Senate Bill No. 946 and San Jose Municipal Code Chapter 6.54

On September 17, 2018, Senate Bill 946 (SB 946) was adopted and requires cities to allow mobile sidewalk vending commencing January 1, 2019. Under the new law, the state mandates local jurisdictions to support and facilitate mobile sidewalk vendors to spur entrepreneurship and economic development opportunities for low-income and immigrant communities.

SB946 applies to "Sidewalk vendors" as defined in Government Code Section 51036 of SB946 which means "a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path." SB 946 describes two types of sidewalk vendors, stationary (a person who vends from a fixed location) or roaming (a vendor who moves from place to place and stops only to complete a transaction).

SB946 does not apply to food trucks. For specific details, here is a link to SB946:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB946,

SB946 affects how the City of San Jose can regulate mobile vending on sidewalks in several significant ways:

- Cities cannot restrict roaming or stationary sidewalk vending in commercial zones unless restrictions are directly related to objective health, safety, or welfare concerns. (Examples of objective concerns include threats to safety from overcrowded sidewalks, preserving sidewalk access for people with disabilities, and preventing food-borne illness.)
- Cities cannot prohibit roaming vendors from operating in City-owned parks, but may prohibit stationary vendors, unless the City has a contract with a concessionaire.
- Cities cannot limit the absolute number of vendors or restrict them to certain areas of the City.
- Cities cannot impose criminal penalties for violators of vending regulations. Instead, violations may be punished with administrative (civil) citations in financial amounts specified in the law.

SB946 does allow for cities to adopt requirements regulating "time, place, and manner" of sidewalk vending, if the requirements are directly related to health, safety or welfare concerns and to require permits. In September, the City of San Jose will update the Ordinance to conform with SB946. The main rules are:

- Mobile sidewalk peddlers must move from place to place and stop only to complete a transaction.
- Peddling in a residential zone is limited to the hours of 9:00 a.m. to 5:00 p.m. Pacific Standard Time and 9:00 a.m. to 7:00 p.m. Pacific Daylight Time.
- Food peddlers must possess and display a valid permit from the County of Santa Clara Department of Environmental Health, and comply with all food preparation and fire codes.
- Peddling is prohibited within 500 feet of: a) City-permitted temporary special events, such as street fairs, festivals, or parades; b) schools during hours of operation; or c) of permitted certified farmers' markets or swap meets. (Mobile peddlers passing through or attempting to remain stationary in these areas should expect to be asked to move on or may receive an Administrative Citation).
- Peddling is prohibited within 500 feet of SAP Center, Avaya Stadium, the Municipal Stadium, and the Convention Center on event days. (Mobile peddlers passing through or attempting to remain stationary in these areas should expect to be asked by Police to move on).
- Peddlers must exercise proper trash disposal.
- Peddlers must not impede ADA accessibility requirements maintaining a minimum of 3' clear access of path of travel.
- Peddlers must exercise proper trash disposal.

Mobile peddlers passing through or attempting to remain stationary in prohibited areas should expect to be asked to move on and may receive an Administrative Citation.

To comply with SB946, the City of San Jose will update various sections of Chapter 6.54 of Title 6 of the San Jose Municipal Code to conform to SB946.

Sidewalk Vendor Resource

Eastside Grown: A partnership managed by Veggielution with non-profits, private businesses and the City of San Jose to educate and train community members on the technical skills to become a permitted vendor. For details on this program, contact

eastsidegrown@veggielution.org or (408) 753-6705.

A Police Officers Guide to Mobile Peddlers: A quick reference guide to becoming a sidewalk peddler. For a copy, contact the San Jose Police Department, Permits Unit at 408.277.4452. This link is the Peddler Application:

http://www.sjpd.org/pdf_forms/peddler_application.pdf.