



# *Memorandum*

**TO:** COMMUNITY & ECONOMIC  
DEVELOPMENT COMMITTEE

**FROM:** Edgardo Garcia  
Richard Doyle

**SUBJECT:** Mobile Vendor Policy Update

**DATE:** May 13, 2019

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## **RECOMMENDATION**

Accept a report concerning an update of City-wide mobile vendor policies to align with California Senate Bill 946, including draft revisions to Chapter 6.54 (Peddler Permit Ordinance) of the San Jose Municipal Code and provide direction to City staff for any further action.

## **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. Additionally, cities are required to consider the person's ability to pay once a citation has been issued.

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.

## **ANALYSIS**

The 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 draft 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. At the time the proposed ordinance is brought to Council, Staff also will bring forward appropriate revisions to the Schedule of Fines to 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).

City staff plans to bring the proposed ordinance and amendment to the Schedule of Fines to Council for approval in August.

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## **COORDINATION**

This memorandum has been coordinated with 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/  
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/s/  
RICHARD DOYLE  
City Attorney

For questions please contact Lt. Scott Johnson, at 408-537-1677, or Terra Chaffee, Sr.  
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