

Agenda Report

December 3, 2018

TO: Honorable Mayor and City Council

THROUGH: Public Safety Committee

FROM: Public Health Department and Department of Public Works

SUBJECT: DIRECTION TO PREPARE AN ORDINANCE AMENDING PASADENA MUNICIPAL CODE RELATING TO SIDEWALK VENDORS IN PASADENA

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the proposed ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3) (General Rule); and
2. In order to find that the proposed ordinance is directly related to objective health, safety, and/or welfare concerns; and
3. Direct the City Attorney to draft an ordinance within 30 days consistent with the provisions set forth herein to address new state laws and to continue local regulation of sidewalk vendors.

BACKGROUND:

In September 2018 Senate Bill 946 was signed into law by Governor Brown, creating new regulations allowing the sale of food or merchandise from a pushcart, stand, display, cart, wagon, rack, or from one's person, upon a public sidewalk or other pedestrian path. The regulations add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code. This law includes the following elements:

- Allows stationary and roaming sidewalk vendors in commercial areas and in parks; allows roaming sidewalk vendors in residential areas;
- Prohibits local jurisdictions from regulating sidewalk vendor's hours of operation any differently than other businesses on the same street, and prohibits restricting

- vendors to specific areas of the city, unless restrictions are directly related to health, safety, or welfare concerns;
- Reduces violations of the municipal code to an administrative fine;
 - Allows local jurisdiction to implement a sidewalk vending program which can include business license and other fees, and can restrict vending based on health, safety, or welfare concerns;
 - Retains Environmental Health's ability to issue a health permit, approve equipment, and regulate food handling practices, as outlined in the California Health and Safety Code; and
 - Applies to Charter Cities and goes into effect on January 1, 2019.

In support of SB 946, the State Legislature made certain findings related to the protection of low-income and immigrant communities from challenges they may face as a result of a criminal record that could arise from illegal vending. The Legislature made further findings that could support unregulated and unfettered vending, however, which would have unfair and disparate impacts on neighborhoods and businesses necessary to the character and vitality of Pasadena. The regulations proposed herein balance the need to protect low-income and immigrant communities while protecting the general health, safety and welfare of the entire Pasadena community.

Immediate Need for Amendment to the Pasadena Municipal Code:

The Pasadena Municipal Code ("PMC") currently makes violation of its sidewalk vending regulations potentially punishable as a crime, and thus needs to be amended to delete such provisions and become consistent with state law. Failure to amend this would place the PMC in direct conflict with the California Government Code. Methods by which the vendors may operate legally in various areas of the city, such as commercial and residential sidewalks and in parks, must be established through implementation of a sidewalk vending program. There is also an immediate need to amend the PMC before the new law takes effect so as to regulate sidewalk vending that may take place around the Rose Parade and Rose Bowl Game. The public health, safety and welfare is of particularized concern because of the size and scope of these two events. Accordingly, new language is recommended in the PMC to address the following:

Need for Continued Regulation of Public Sidewalk Vendor Permitting

SB 946 authorizes a local authority to require additional licenses or permits to the extent required by law. In observance of SB 946, and to ensure public safety and adherence to Americans with Disabilities Act ("ADA") requirements, a new permit category for sidewalk vending will be established. Existing municipal regulations allow sidewalk occupancy permits in limited circumstances for construction related activities, sidewalk dining, and the installation of newsracks. Furthermore, PMC Section 12.12.090 – Display of goods on sidewalks or streets – currently prohibits the display and sale of goods within the public right-of-way. This section will need to be amended to ensure compliance with SB 946. The new sidewalk vending permit program will include applicability requirements and enforcement details consistent with state and federal statutes, such as the ADA.

Need for Continued Regulation of Vendor at Special Events

SB 946 authorizes a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of farmers' markets and swap meets, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special event. Farmers' markets, swap meets, and temporary special events contribute to Pasadena's unique character within the larger southern California community, and ensuring the vitality of these events is of overriding concern to the welfare of the city. In particular, events within the Central Arroyo Seco such as the Rose Bowl Game, and the Rose Parade, require particularized planning for public safety. The proposed regulations will prohibit vendors from vending within the immediate vicinity of farmers' markets, swap meets, and temporary events in the city. The proposed regulations will also prohibit vending within the Central Arroyo during certain events in the Arroyo, and around the Rose Parade route.

Need for Continued Health Permitting of Vendors

Currently, the PMC prohibits sidewalk vending in commercial areas, and restricts stationary vendors to operate a maximum of 4 hours in city parks. Amendments to the PMC will include updating outdated references, removing and/or revising newly prohibited restrictions (currently in Chapter 8.16); and bringing certain definitions (in Chapter 8.04) into alignment with state law.

Additional Changes Required to Protect Public Health, Safety, and Welfare

Additional, less time sensitive changes to the PMC will be brought back to the City Council at a later point to address refinement of access associated with the Americans with Disabilities Act, vending in commercial districts, vending in parkland and on medians. Changes in enforcement and the volume of vending will require additional changes associated with staffing and fees associated with enforcement.

COUNCIL POLICY CONSIDERATION:

The proposed action is consistent with the City Council's strategic planning goal to ensure public health, safety and welfare.

ENVIRONMENTAL ANALYSIS:

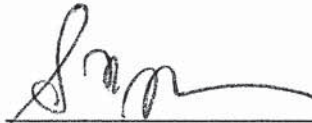
The proposed action is exempt from CEQA pursuant to State CEQA Guidelines Section 15061 (b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Such is the case with an ordinance implementing SB 946 that allows and regulates the sale of food and merchandise by sidewalk vendors. No direct physical changes to the environment are proposed. The additional vending that may occur as a result of this ordinance could generate a nominal and unmeasurable amount of greenhouse gas ("GHG") emissions and air pollutant emissions. Such emissions would be negligible and well below any air quality or GHG significance thresholds due to the limited motor vehicle engine and

generator use associated with individual vendors. Finally, while noise could result from vendor operation (e.g., engine/generator humming, occasional squealing tires, human voices, etc.), such noise would be well below the noise standards of the City's Noise Ordinance and General Plan Noise Element.

FISCAL IMPACT:

State law allows the application of business license and other license fees to this program. The City's existing business license fees will apply to sidewalk vendors. It is anticipated that business license revenues and public sidewalk vendor permitting revenues will increase. The volume of increase is not able to be determined at this time. Additional costs may be incurred by City Departments related to enforcement of licensed and unlicensed vendors in new areas of the City.

Respectfully submitted,



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Public Health Department

Concurred by:



ARA MALOYAN
Director of Public Works

Approved by:



STEVE MERMELL
City Manager