



DATE: February 3, 2020

TO: Council Economic Development Committee

FROM: Development Services Director

SUBJECT: Regulation of Sidewalk Vendors in Accordance with SB 946

RECOMMENDATION

That the Council Economic Development Committee reviews this report and provides direction to staff regarding the regulation of sidewalk vendors.

SUMMARY

California Senate Bill 946 ("SB 946") establishes new laws associated with all sidewalk vendors and general provisions by which they can operate. Because the City currently imposes regulations on sidewalk vending activity that are not consistent with SB 946, the City must take steps to achieve compliance. Until City Council formally adopts sidewalk vending regulations that align with SB 946, the City may not regulate, cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the statute.

BACKGROUND

In 2018, the State Legislature adopted SB 946 to decriminalize and limit local regulation of sidewalk vending. The bill was intended to promote entrepreneurship and economic empowerment among low income and marginalized communities and protect undocumented persons from criminal prosecution and subsequent deportations triggered by municipal code violations.¹

On January 1, 2019, SB 946 became effective, as codified in Government Code sections 51036 through 51039. In August 2019, Development Services staff met with the City Attorney's Office to review the City's Municipal Code. Staff identified existing provisions of the Code that conflict with SB 946. (Attachment II)

¹ Shin & Summers, 2019, "The New Food Economy: Sidewalk Vending & Microenterprise Home Kitchens", paper presented to the League of California Cities Conference, Long Beach, 12 October, viewed December 2019, <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2019/2019-Annual-Conference/10-2019-AC;-Shin-Summers-New-Food-Economy-Sidewalk.aspx>

In December 2019, staff representing Development Services, the City Manager's Office, Public Works, Finance, Police, and the Hayward Area Recreation & Parks District met to discuss the implications of SB 946 and identify opportunities and issues for Council consideration moving forward.

DISCUSSION

The Purpose of SB 946

Many people — including people of color, women, and immigrants — have been historically excluded from the benefits of society, forcing them to find alternative ways to make a living in a parallel, or “informal,” economy. The workers of the informal economy, including sidewalk vendors, represent some of the most marginalized workers in the country. The nature of their employment status makes them more vulnerable to exploitation, and for undocumented immigrants, more vulnerable to deportation if a sidewalk vending violation is elevated into a deportation matter.

By decriminalizing and legitimizing sidewalk vending, SB 946 is intended to provide protection and legitimate, regularized economic opportunity for marginalized workers who are essentially small-scale entrepreneurs. The statute asserts that sidewalk vending: 1) contributes to a safe and dynamic public space, 2) increases access to desired goods, such as culturally significant food and merchandise, and 3) promotes the safety and welfare of the general public by encouraging local authorities to support and properly regulate sidewalk vending. The statute establishes parameters for local regulation of sidewalk vending, prohibits any enforcement or criminal penalties other than administrative fines, sets caps for those fines, and requires cities to develop an administrative process for vending violations that considers the vendor's ability to pay.

Current State of Sidewalk Vending in Hayward

Sidewalk vending is common throughout Alameda County and in California generally. Officers in Hayward's Code Enforcement Division and Police Department (HPD) estimate that there are between 10 to 25 sidewalk vendors, mostly roaming, who work in Hayward on any given day. Sidewalk vendors generally set up near intersections with foot traffic, such as downtown or around schools, and are more active in summer. Data from Alameda County's Food Facilities and Vehicles Unit indicates that there are six (6) food vendors with official permits to operate in Hayward, including four (4) cooking carts and two (2) ice cream push carts.

Based on City staff observation, three (3) informal food vendor interviews, and review of vendor permit data, Hayward's sidewalk vendors are predominantly Hispanic and Asian. Interviewed vendors indicated they did not have food vending permits because there are too many requirements that are too difficult to meet. Vendors indicated they would be more likely to seek a permit if the process was simple, affordable, and provided a longer time period between renewals to stay current.

City Permit Center Staff report that people regularly inquire about how to obtain a sidewalk vending permit. However, Hayward's current regulations prohibit any person "to hawk, peddle, vend or sell any article, merchandise, edible foods of any kind, or any other thing of value from a hand cart or other vehicle moved by human power along or upon the streets of the City of Hayward."

Although sidewalk vending complaints are rare, HPD has received several recent public complaints regarding sidewalk vending, all reported by the same individual. The basis of these complaints appears to be animus toward sidewalk vending in general. Interviewed vendors reported that they do not experience much push back from the Hayward community in terms of sidewalk vending, except for occasional requests from police or business owners to move on to other locations. HPD confirmed that officers have not had the need to actively enforce the City's ban on sidewalk vending, and generally take a hands-off approach towards vendors, unless there is a violation of public safety or right-of-way regulations, such as queuing up in the street or crowding the sidewalk.

Sidewalk Vending Regulations After SB 946

SB 946 defines "sidewalk vendor" as a person who sells food or merchandise from any "non-motorized conveyance" upon "a public sidewalk or other pedestrian path." A sidewalk vendor can be roaming or stationary.

Sidewalk vending does not include food trucks or other persons who sell their wares from motor vehicles or on private property. SB 946 does not alter regulations regarding the accessibility of public right of ways, the sale of dangerous or counterfeit goods, or food safety laws, including state or county food permit requirements.

If the City wishes to continue to regulate sidewalk vending, it must do so in a manner consistent with SB 946. Essentially, the City may no longer prohibit sidewalk vendors although it may establish regulations related to the time, place, and manner of sidewalk vending if they are "directly related to objective health, safety or welfare concerns." For example, regulations might include limitations on hours of operation that are not unduly restrictive, requirements to maintain sanitary conditions, or requirements necessary to ensure compliance with federal Americans with Disabilities Act or other disability access standards. However, the City cannot regulate on the grounds of perceived community animus or concern for economic competition. SB 946 also permits some regulations related to residential zones, permitted temporary events and farmers markets, and public parks.

SB 946 also prohibits cities from criminalizing sidewalk vending violations. Instead, a violation is punishable only by an administrative fine, pursuant to an ability-to-pay determination.

Input from City and Agency Stakeholders

On December 12, 2019, staff met to discuss the potential implications of SB 946 and brainstorm ideas and issues for consideration when designing sidewalk vending regulations. Attendees included Laura Simpson (Development Services), Fred Kelley (Public Works -

Transportation), Forrest Nylander (Finance – Revenue), Paul Nguyen (City Manager’s Office - Economic Development), Erik Pearson (Public Works – Environmental Services), Jeff Krump (Public Works – Solid Wastes), Ryan Cantrell & Tommie Clayton (Police), Jacqui Diaz (HARD), Jeremy Lochirco (Development Services – Planning), and Molly Almeida (Development Services).

Overall feedback was that there is a high need for education and outreach both externally (to vendors, the public, local businesses, etc.) and internally (to City departments, schools, parks, etc.) to clarify sidewalk vending rules and provide clear direction regarding enforcement, perhaps in multiple languages. Depending on whether the City wishes to be more permissive, more regulatory, or more supportive of sidewalk vending, staff identified opportunities to offer incentives such as no- or reduced-cost licenses and permit fees and a range of regulations related to location, noise, hours, signs, smells, lights, insurance, and what items should not be sold from carts.

One of staff’s biggest open questions was around the issue of enforcement. Specifically, what is the enforcement priority, what enforcement options are available given the low deterrent effect inherent in SB 946’s mandated maximum fine amounts, and the most appropriate arm to address sidewalk vending violations (HPD, Code Enforcement, a new enforcement entity). Staff also identified a need to invite the Fire Department and Hayward Unified School District to participate in future discussions.

Policy Options

There are two main approaches the City can take to adopt an enforceable sidewalk vending program that responds to the objective needs and circumstances of the City, and protects public health, safety, and welfare.

One approach is to adopt rules and regulations that, if followed, allow vendors to sell legally. The main benefit of this approach is that it avoids labor and administrative costs associated with city permitting.

The second and most common approach taken by cities who have updated their regulations to comply with SB 946, is to establish a permitting system. The benefits of this approach include the ability to collect adequate information about vending operations within the City’s limits, to facilitate contact between the City and vendors, and to collect fees that can be used to help cover the cost of program operations. Cities that have pursued this approach include Oakland, Glendale, Pasadena, Santa Monica, and Huntington Beach. (To date, Oakland is the only city in Alameda County that has passed a sidewalk vending ordinance in response to SB 946.)

Sidewalk vending helps activate the streetscape and contributes to the City’s culinary and cultural offerings. Because sidewalk vending involves a lower cost burden than operating a traditional brick and mortar store, it offers a lower cost of entry into the formal economy for small-scale entrepreneurs. However, sidewalk vending can also create challenges such as trash and blight problems, interference with sidewalk access for pedestrians or individuals with disabilities, and competition with other permitted economic activities such as park

concessions. Cities have a range of defensible regulations that can be adopted within SB 946's limits.

Staff wishes to clarify the policy approach the City desires to take regarding sidewalk vending, so we can develop regulations and implementation strategies that reflect the priorities, needs, and circumstances of the Hayward community. Specifically, CEDC member feedback is sought on the following questions:

- 1) Given the environment, nature of existing sidewalk vending, and implications of possible increases in future vending activities, what is the spirit of the sidewalk vending ordinance staff should craft? Should it be more permissive, more regulatory, or more supportive?
- 2) Should the City provide incentives for sidewalk vending or focus on regulation and enforcement?
- 3) How should we address the real or perceived issue of inequity between businesses if the City incentivizes sidewalk vending entrepreneurs? Is it fair to brick and mortar businesses?

FISCAL IMPACT

Unknown at this time. The fiscal impact of revised sidewalk vending legislation will mostly be associated with licensing, permitting and enforcement. If the Council directs preparation of a sidewalk vending regulatory program that includes permitting, staff will assess the appropriate fee structure to help defray the cost of staff's time to process sidewalk vending applications.

STRATEGIC INITIATIVES

Updated sidewalk vending regulations will support the Complete Communities Strategic Initiative. The purpose of the Complete Communities Strategic Initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work, and play. This item supports the following goals and objectives:

- Goal 1: Improve quality of life for residents, business owners, and community members in all hayward neighborhoods.
- Objective 3: Increase collaboration with businesses, non-profits and neighborhood groups on placemaking projects
- Objective 5: Actively value diversity and promote inclusive activities

This item is also in alignment with the 2040 General Plan, including the following goals and objectives:

Economic Development Goal 1: *A Diversified and Robust Economy*

ED-1.9 Culturally Diverse Businesses - The City shall encourage the development of specialty businesses that reflect the diverse ethnic and cultural groups of the Hayward community.

ED-1.11 Local-Serving Retail - The City shall encourage the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to local residents and businesses.

Economic Development Goal 2: *Local Entrepreneurship*

ED-2.1 Assist Entrepreneurs - The City shall support and assist local entrepreneurs who are starting businesses within the Hayward community.

Community Health & Quality of Life Goal 5: *Safe and Cohesive Neighborhoods*

HQL-5.3 Eyes on the Street - The City shall promote urban design principles that support active use of public spaces in neighborhoods, commercial areas, and employment centers at all times of day. Active use of public spaces provides “eyes-on-the-street” to enhance public safety in these areas.

PUBLIC CONTACT

Staff has conducted three (3) informal interviews with sidewalk vendors and intends to seek additional feedback from vendors when possible. Staff has included representatives from HARD as members of the team responsible for developing a sidewalk vending ordinance and plans to seek input from other stakeholders including residents, local schools, business improvement district leaders, community groups, and the Hayward Chamber of Commerce.

NEXT STEPS

Staff will take into consideration any feedback from the CEDC regarding development of a sidewalk vending program. Staff will meet with the City Attorney to draft proposed regulations for sidewalk vending consistent with SB 946. Staff will also conduct outreach to stakeholders to share draft regulations, solicit input, and help identify and address any concerns.

Prepared by: Molly Almeida, Management Analyst

Recommended by: Laura Simpson, Development Services Director
Paul Nguyen, Economic Development Manager

Approved by:



Kelly McAdoo, City Manager