



## **CITY OF COMMERCE AGENDA REPORT**

**TO:** Honorable Mayor and City Councilmembers **Item No. \_\_\_\_\_**

**FROM:** Noel Tapia, City Attorney

**SUBJECT:** First Reading and Introduction on Ordinance Amending Commerce Municipal Code, Title 5 (Business Regulations and Licensing), Chapter 5.16 (Sidewalk Vending)

**MEETING DATE:** May 30, 2023

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### **RECOMMENDATION**

1. Introduce for First Reading, by title only and waiving a full reading, an Ordinance entitled "AN ORDINANCE OF THE CITY OF COMMERCE AMENDING CHAPTER 5.16 TO THE CITY OF COMMERCE MUNICIPAL CODE RELATING TO SIDEWALK VENDING"; or
2. Direct the City Attorney's Office to conduct additional research to address any concerns raised by City Council and amend the Ordinance accordingly for City Council's consideration.

### **BACKGROUND**

The City of Commerce Municipal Code ("Code") requires updating the local sidewalk vendor regulations to be consistent with both Senate Bill 946 and Senate Bill 972. The code also requires additional regulations concerning the time, place, and manner of sidewalk vending activities to protect and preserve the safety and welfare of the public from the secondary effects of sidewalk vending activities.

The City Attorney's office held the first ad-hoc meeting on March 21 and November 9, 2022, with City Councilmembers to educate and provide information on existing street vending regulations. The City Attorney's Office was directed to draft an Ordinance pursuant to the general policy tenets discussed in said meeting, which is hereto attached. During the first ad-hoc meeting, our office was requested to conduct outside research addressing questions posed. As such, a series second ad-hoc meetings were conducted on April 10, April 12, April 18, and May 4, 2023, to present our office's findings.

Topics discussed include: (1) enforcement mechanisms to regulate street vendors with or without permits, (2) commissary facilities to prepare and store food, (3) areas to allow vendors and business to sell while generating revenue for the City, and (4) informing

residents and vendors on the current regulations and encouraging vendors to apply for street vending licenses.

## **ANALYSIS**

Pursuant to the California Constitution, all California cities have the power to create local ordinances that are not in conflict with general laws.<sup>1</sup> This “police power” enables local governments to adopt regulations designed to promote general prosperity, particularly in regard to the public health, morals, and safety for its residents.<sup>2</sup>

Sidewalk vending is not only regulated by Senate Bill 946 (“SB 946”) but also by Senate Bill 972 (“SB 972”) as of January 1, 2023.

SB 946 regulates a local government’s ability to regulate sidewalk vendors operating in the public right-of-way (unless directly related to health, safety, or welfare concerns). SB 946 was enacted to decriminalize street vending thereby limiting a City’s enforcement strategies. This bill added specific framework for regulating sidewalk vendors. It also outlines penalties for violation of sidewalk vendor ordinances and specifies that any local ordinance must comply with this statute. The chart below summarizes the permitted/unpermitted actions consistent with this bill:

<b>Regulations</b>	<b>Description</b>
Hours of Operation	The City can limit the hours of operation in all zoning areas as long as hours are not unduly restrictive and concern the health, safety and welfare of residents. Hours of operation cannot be more restrictive than other businesses operating in the City.
Areas of Operation	A City can restrict sidewalk vending in residential areas (stationary vendors only) and other areas, if necessary, only if directly related to objective health, safety, or welfare concerns.
City Parks	A City must allow vendors to sell generally in park but can prohibit vending if either the city has an exclusive concessionaire agreement, vending impedes the public use and enjoyment of the public’s use of the park and undue concentration of commercial activity, or the regulation is directly related to objective health, safety, or welfare concerns.
Sidewalk Vendors near Temporary Permit Areas	A City can prohibit sidewalk vending near or next to farmers markets, swap meets, and temporary permit areas.

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<sup>1</sup> Cal. Const. art. XI, § 7.

<sup>2</sup> *Munn v. Illinois* (1877) 94 U.S. 113, 125; *Chicago, B. & Q. Ry. Co. v. Illinois* (1906) 200 U.S. 561, 592.

Vendors Cap	A City cannot limit the number of vendors selling unless related to objective health, safety, or welfare concerns.
Sidewalk Access and Americans with Disabilities Act (ADA) Concerns	A City can regulate and adopt regulations to ensure vendors are complying with ADA standards and other disabilities.

Sidewalk Vending regulations further changed with the passage of SB 972. This bill amended the current California Retail Code to simplify the regulations for street vendors to obtain county issued health permits. This new bill changes the California Retail Food Code by establishing a new Chapter in the California Retail Food Code (CRFC) titled Compact Mobile Food Operations (“CMFO”). These changes were intended to promote economic inclusion while modernizing the CRFC so that sidewalk food vendors can obtain a permit and join the regulated vending economy. Specifically, the bill created a new subtype of mobile food facility that addresses sidewalk food vending - a compact mobile food facility. SB 972 1) eliminates equipment requirements, such as sinks, for sidewalk food vendors; 2) increases the discretion of local health departments to approve innovative equipment design for all mobile food facilities; 3) enhances safe on-site food preparation of non- potentially hazardous foods, including healthy food like sliced fruit and vegetables; 4) catalyzes the manufacturing of safe and affordable sidewalk food vending equipment at scale; and 5) continues to promote non-criminal administrative fines for code violations.

Accordingly, the purpose and intent of the attached Ordinance is to further protect the safety and welfare of the general public and improve the quality of life of the City of Commerce (“City”) by imposing reasonable time, place, and manner restrictions on vendors in violation of the Commerce Municipal Code, SB 946, SB 972, and any relevant state laws while respecting and maintaining the spirit of entrepreneurship.

Commerce residents and visitors purchase from street vendors that are stationed in areas throughout the City which pose health, safety, and welfare concerns. For instance, the presence of vending activity is in some of the City’s most high-traffic intersections and near interstate highway entrances that can place at risk the public’s health and safety. Additionally, due to where certain vendors are stationed, customers cause traffic congestion which poses safety concerns for drivers passing through the City’s roadways. Vendors also utilize vending equipment, canopies, tables, chairs as part of their business on the sidewalk minimizing access for pedestrians to safely walk through in violation of the American with Disabilities Act (“ADA”). Some Vendors also sell on private property and remain open past the time listed in the ordinance. Lastly, most, if not all vendors operating in the City, prepare food on the sidewalk before selling which poses health concerns.

Therefore, the City is proposing a comprehensive amendment to the City’s current code.

At this time, the attached Ordinance addresses the health and safety concerns associated with their operation in and throughout the City currently observed by City staff and provides the City with enforcement regulations towards stationary and roaming vendors, while continuing to respect and promote entrepreneurship.

Alternatively, City Council has the option of directing the City Attorney's office to conduct additional research on any Ordinance provision that City Council may have concerns about.

**ATTACHMENTS:**

**Attachment A-** *Proposed Ordinance Amending Chapter 5.16 Relating to Sidewalk Vending*

**Attachment B-** *Resolution*

**Attachment C-** *Sidewalk Vending Presentation*

Respectfully Submitted By: Edgar P. Cisneros, City Manager

Recommended/Prepared by: Jocelyn Portales and Christy Garcia, Deputy City Attorney(s)

Reviewed By: Vilko Domic, Assistant City Manager

Reviewed By and Approved as to Form: Noel Tapia, City Attorney