



# City of Culver City

Mike Balkman  
Council Chambers  
9770 Culver Blvd.  
Culver City, CA 90232  
(310) 253-5851

## Staff Report

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**File #:** 19-714, **Version:** 1

**Item #:** A-3.

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**CC-- (1) Discussion of New State of California Regulations Governing Sidewalk Vendors, and Potential Culver City Municipal Code Amendments Regarding Licensing and Operating Regulations for Sidewalk Vending including in City Parks; (2) If Desired, Creation of an Ad Hoc Subcommittee and Appointment of Two City Council Members thereto; and (3) Direction to the City Manager as Deemed Appropriate.**

**Meeting Date:** February 11, 2019

**Contact Person/Dept:** Shelly Wolfberg/Assistant to the City Manager

**Phone Number:** (310) 253-6000

**Fiscal Impact:** Yes ☐ No ☒

**General Fund:** Yes ☐ No ☐

**Public Hearing:** ☐ **Action Item:** ☒ **Attachments:** ☒

**Commission Action Required:** Yes ☐ No ☒ **Date:**

**Public Notification:** (E-Mail) Culver City Chamber of Commerce; Culver City Downtown Business Association; and Meetings and Agendas - City Council (02/06/19);

**Department Approval:** John M. Nachbar (02/06/19)

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### **RECOMMENDATION**

Staff recommends the City Council (1) discuss the new state law allowing sidewalk vending and potential Culver City Municipal Code (CCMC) amendments regarding licensing and operating regulations for sidewalk vending and in City parks; (2) if desired, create an ad hoc subcommittee and appoint two City Council members thereto; and (3) provide direction to the City Manager as deemed appropriate.

### **BACKGROUND**

The City's current regulations pertaining to sidewalk vending are contained in CCMC, Subchapter 11.09.200, et seq. "Street Vendors" which originated in the 1965 Code, with revisions in 1984 and 1996. Subchapter 11.09.200, et seq. has been construed to apply to sidewalk vendors as well as to food truck vending on the streets. On September 17, 2018, Governor Brown signed SB 946 (Lara) which establishes statewide governance of vending in the public right-of-way and in parks, effective

January 1, 2019. Local jurisdictions that wish to enforce violations against sidewalk vending are required to first adopt Rules and Regulations consistent with SB 946. While the law does not require a permit-based system to comply, local jurisdictions must, at minimum, adopt rules and regulations by ordinance or resolution.

This Staff Report provides: 1) a brief overview of SB 946 and its impact on the City's ability to regulate sidewalk vending and vending in the parks; and 2) options to achieve compliance as required by State law.

## **DISCUSSION**

### *Overview*

Below is a summary of key provisions of SB 946:

- “Sidewalk Vendor” 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.
- Two categories of vending are allowed: “Stationary sidewalk vendors” that vend from a fixed location, and “roaming sidewalk vendors” who move from place to place and stop only to complete a transaction.
- Vending on City Sidewalks - The City may not require vendors to operate within specific parts of the public right-of-way, except when that restriction is related to health, safety, or welfare concerns. Local jurisdictions may adopt requirements regulating time, place, and manner such as:
  - Hours of operation that are not unduly restrictive;
  - Requirements to maintain sanitary conditions;
  - Requirements necessary to ensure compliance with the federal Americans with Disabilities Act (ADA) and other disability access standards;
  - Requirements that the sidewalk vendor possesses a valid California seller’s permit;
  - Requirements for additional licenses or permits from other state or local agencies to the extent required by law (such as a Los Angeles County Public Health approval for food vendors).
- Per Blockface Provision - The City may not place limits on the overall number of permits. As stated above, local jurisdictions may not require vendors to operate within specific parts of the public right-of- way. However, it may be possible to restrict the number of vendors per block, on a case by case basis, pursuant to safety, health, and welfare justifications.
- Vending in Residential Areas - The City may prohibit stationary vending in residential areas but not roaming vending.
- Adjacent Businesses - The City may not require approval of any non-governmental entity.
- Farmers’ Markets and Swap Meets - The City may restrict or prohibit sidewalk vending near special events and the Farmers Market, during the hours the Farmer’s Market is operating.
- Special Events - The City may restrict or prohibit vending within the immediate vicinity of an area designated for a temporary special permit. A temporary special permit is usually issued for special events such as filming, festivals, parades, outdoor concerts and the like.

- Vending in Parks - The City may not prohibit vending of food and merchandise in parks owned or operated by the City. However, the City may prohibit stationary vending in parks if the park has an exclusive concession agreement. The City may impose additional regulations necessary to ensure the public's use and enjoyment of natural resources or recreational opportunities, and to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park. (Note: CCMC Section 9.10.055 currently prohibits vending in public parks. This section would need to be updated to comply with SB 946, and to be consistent with any new ordinance adopted by the City.)
- Enforcement - Only administrative fines may be issued to enforce any new City sidewalk vending ordinance. No criminal infraction or misdemeanor citations are permitted under the new law. The City's current administrative citation fine structure of \$100 for the first offense, \$200 for the second, and \$500 for the third (within one year) are consistent with the fine structure allowed under state law. If the new City ordinance contains a sidewalk permit requirement, state law allows higher fines (\$250, \$500, and \$1000) for sidewalk vending without a permit.
- Ability-To-Pay Determination - Local jurisdictions are required to offer an Ability-To-Pay Determination to individuals who are issued a violation. Individuals who are determined to be under the federal poverty line would only be responsible for 20% of the penalty.

### *Permit-Based System vs. Regulatory Vending System*

State law allows local jurisdictions to establish either a permit-based vending system or regulatory vending system. Under a permit-based system, the City could issue permits based on location (i.e. sidewalks and parks) and may issue permits for roaming vendors anywhere in the City based on health, safety, and welfare concerns. Should the City Council wish to proceed with a permit-based system, the Council may consider issuing separate permits as follows:

*Location-Based Permit* - This permit would secure a requested location for a one-year term with restrictions only based on health, safety, and welfare.

*Roaming Permit* - State law provides that the City may not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is related to objective health, safety or welfare concerns. However, if the intent is to provide a safe vending environment and avoid overconcentration of roaming vendors, the City may request a route plan for the issuance of a permit.

*Parks Permit* - State law provides that the City may not prohibit stationary vending in parks unless such park has a concessions agreement. (Note: CCMC Section 9.10.055 currently prohibits vending in public parks. This section would need to be updated to comply with SB 946, and to be consistent with any new ordinance adopted by the City.)

- The City may issue permits to individuals requesting a specified location within parks that do not have a concessions agreement.
- The City may issue permits to individuals seeking to roam within a park, regardless of concessions present in the park.

Under a regulatory vending system, the City Council could request City staff to review and prepare Rules and Regulations consistent with State law. These would serve to guide vendors as they conduct vending activities with respect to place, time, and manner. For example, vendors would be

able to choose a vending location on a first-come, first-served basis and could be required to follow rules such as no vending on exits or entryways, no blocking the sidewalk in compliance with the American Disabilities Act (ADA), and showing proof of health permits, business license, and liability insurance.

Choosing either system constitutes a policy decision of the City Council. In making a determination, the City Council may wish to consider the benefits of each system, the resources necessary to operate, and the types of regulations to implement. Please note that the City may only charge fees to recover program costs from vendors if a permit system is in place.

### **Options for City Council Consideration**

Should the City Council wish to consider possible actions, in light of State law, below is a list of options the City Council may consider in making its determination.

#### *1. Permit-Based System*

As discussed above, if the Council wishes to explore a permit-based system, it is recommended that the City Council request staff to prepare a draft ordinance for the establishment of a new sidewalk vending program and authorize the Finance Department to issue sidewalk vending permits for the sale of food, goods and merchandise.

#### *2. Regulatory Vending System*

If the City Council wishes to proceed with a regulatory system, the Council should request staff to create a sidewalk vending ordinance for consistency with State law, and instruct staff to submit Rules and Regulations for City Council approval for compliance.

#### *3. Status Quo - No Vending Program*

If the Council does not wish to establish a vending program of any kind, State law will be the sole governing authority over vending on sidewalks and in parks. The City would only be able to enforce in accordance with State law as it relates to the sale of illegal items, blocking the sidewalk, or for violation of any other laws. Note that certain provisions in contained in the City's existing provisions (CCMC Subchapter 11.09.200, et seq.) are inconsistent with state law.

### **Ad Hoc Subcommittee**

Given the numerous options for establishing vending regulations, staff believes such evaluation and discussion would be more efficient at a subcommittee level prior to consideration by the full City Council. Therefore, it is recommended that City Council create an ad hoc subcommittee to work with City staff to review the various options and make recommendations to the City Council.

### **FISCAL ANALYSIS**

There is no fiscal impact to discuss changes to the sidewalk vending ordinance. However, should the City Council wish to proceed with implementation of a new permit-based vending program, the Chief Financial Officer should be requested to report with a fee study and program budget consistent with City Council action. Please note that the City may only charge fees to recover costs if a permit-based

system is established.

## **ATTACHMENTS**

1. 2019-02-11 - ATT - SB 946, Lara. Sidewalk vendors.
2. 2019-02-11 - ATT - CCMC - § 11.09.200 - § 11.09.215

## **MOTION**

That the City Council:

1. Discuss the new state law allowing sidewalk vending and potential Municipal Code amendments regarding licensing and operating regulations for sidewalk vending and in City parks; and
2. If desired, create an ad hoc subcommittee and appoint two City Council Members thereto; and
3. Provide direction to the City Manager as deemed appropriate.