

What Local Governments Can Do to Avoid a Vending Free-for-All In the Wake of the Safe Sidewalk Vending Act

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By Deborah Fox and Steven Burke

Historically, cities and counties ("local authorities") have had the ability to regulate sidewalk vending under the traditional public safety rubric, including criminal enforcement against offending vendors. Whether, where, and under what terms to allow sidewalk vending was, by its nature, a question left to each unique community to address after weighing the often competing interests of various local stakeholders. All that changed on Sept. 17, 2018, when Governor Brown signed SB 946, the Safe Sidewalk Vending Act, into law. The Act casts aside the hard-fought local compromises and elevates sidewalk vending to a new and prominent status statewide. As of Jan. 1, 2019, local authorities will be prohibited from regulating sidewalk vending in a manner that is inconsistent with the restrictions and requirements in the Act.

What brought SB 946 to the scene?

Sidewalk vending often struggles under stereotypical perspectives that associate it with monolingual immigrant communities, which has also led to fear, misinformation, and criminalization. Recent stories of harassment and targeting by federal immigration authorities added momentum to a



Deborah J. Fox, left, and T. Steven Burke, Jr., right, of Meyers Nave Riback Silver & Wilson.

statewide effort to decriminalize sidewalk vending. In heralding Governor Brown's signing of SB 946, the bill's sponsor, State Senator Ricardo Lara (D-Bell Gardens), stated that "We can start seeing sidewalk vendors for who they are—women and seniors, single parents, and micro-business owners taking that first step to starting their own business." The letter and spirit of the Act address the issue of protecting a vulnerable population from criminalization and deportation for what is often their only means of making a living.

Which sidewalk vendors are covered?

The Act cuts a much wider swath than decriminalizing only the most

frequently seen carts selling various food items from a few select neighborhoods. In the absence of properly crafted local regulations, the Act's definition of "sidewalk vendor" provides for virtually unrestricted sale of 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. From the childhood lemonade stand to a homeless person with a pushcart and a for-sale sign, all are welcome on sidewalks along with pedestrians, bicycles, scooters, and nearby brick-and-mortar businesses.

How does SB 946 limit local control?

Under SB 946, local authorities cannot regulate or ban vendors unless they have a licensing system that meets specified requirements. In effect, SB 946 opens the door for sidewalk vending in cities and counties that do not have a licensing system, which further allows vending in cities and counties that might not have considered allowing it. The purpose is to encourage local authorities to establish an appropriate regulatory regime. Examples of the Act's parameters include specifying that local authorities: (1) cannot require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual (such as a nearby brick-and-mortar store) before he or she can sell food or merchandise, and (2) cannot restrict sidewalk vendors to operate only in a designated neighborhood or area except when that restriction is directly related to objective health, safety, or welfare concerns. However, a local authority may prohibit stationary sidewalk vendors, but not roaming vendors, in areas zoned exclusively residential. The Act also addresses sidewalk vending in parks, the public right-of-way, farmers' markets, swap meets, and areas designated for a temporary special permit, among others.

How does SB 946 impact decriminalization?

The Act encourages integrating sidewalk vending into the broader economic community by focusing on decriminalization in two key ways. First, the law requires administrative fines for violations instead of criminal charges, the latter of which also increases the risk of deportation for immigrant vendors. Second, the law requires that criminal prosecutions that are pending under a local regulation or prohibition of sidewalk vending must be dismissed if they have

not reached final judgment. The Act specifically states that "the safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations."

What should cities and counties do to comply with SB 946?

The Act requires local authorities to make specific findings related to "objective health, safety or welfare concerns" when developing local regulations. However, the underlying intent of the Act is clear as it explicitly finds that "sidewalk vending contributes to a safe and dynamic public space" and "perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern." The message is that sidewalk vending regulations will not survive legal scrutiny if they do not arise from a well-defined and objective basis.

In evaluating potential requirements beyond those enumerated in the Act, the local authority should review and tightly define the scope of activity it seeks to regulate. Take care to avoid the common pitfalls of solicitation ordinances and draft content-neutral regulations aimed at particular conduct and not at the particular messages or methods of a sidewalk vendor at issue. To support findings of objective health, safety, or welfare concerns, the legislative record must be prepared as completely as possible to identify the government interests at play and why government regulation is needed. Local authorities also should think about unintended consequences and consider whether alternative, non-regulatory approaches are available to address the concerns or conduct in question.

What are the best next steps?

It is imperative to understand that SB 946 has essentially elevated sidewalk vending to a new and higher level of protected activity. Going forward, law

enforcement and code enforcement should be trained that they cannot cite, fine, or prosecute a sidewalk vendor for violating any rule or regulation that is inconsistent with the provisions of the Act. Existing ordinances must be carefully reviewed to make sure they meet the strict regulatory parameters in the Act and necessary adjustments must be made. If a city or county does not currently regulate sidewalk vending or has banned it, then the process should start immediately for studying when, where, and how to regulate it. In either situation, effective and constitutionally sound regulations depend on the adequacy of the local authority's supportive findings, and creative approaches may be required.

Fortunately, if a local authority decides to implement or update its sidewalk vending regulations, the Act sets forth some basic ground rules and an administrative fine framework. The tougher questions will arise when a local authority seeks to adopt additional requirements regulating the time, place, and manner of sidewalk vending based on findings of "objective health, safety, or welfare concerns." If a local authority does all of these things, and does not stray too far from the letter or spirit of the Act, a successful local sidewalk vending program can be achieved and a sidewalk vending free-for-all can be avoided.

Deborah Fox is a principal and chair of Meyers Nave's First Amendment and Trial & Litigation Practice Groups. She can be reached at dfox@meyersnave.com.

Steven Burke is of counsel in Meyers Nave's Trial & Litigation and Municipal & Special District Law Practice Groups. He can be reached at tsburke@meyersnave.com.