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Coming Soon to a Sidewalk Near You – The Safe Sidewalk Vending Act

By Deborah Fox and Steven Burke



Public sidewalks are hubs of often competing activities for a local community, including accommodating pedestrians, bikes, scooters, café seating, business signage, advertisements, protests and, increasingly, vending.

Cities and counties have historically had the ability to regulate public sidewalks, and many jurisdictions prohibited sidewalk vending based on public safety. The prohibition often included criminal enforcement against offending vendors in areas not traditionally or legally defined as being open to sidewalk vending, including parks. Whether, where, and under what terms to allow sidewalk vending was a question left to each unique community to address after weighing socio-economic factors and numerous, often competing, interests of local stakeholders.

On Sept. 17, 2018, Governor Brown signed SB 946, the Safe Sidewalk Vending Act, into law. The Act changes the status quo of sidewalk vending in California and erodes the traditional areas of local control by elevating sidewalk vending to a new and prominent status statewide. As of Jan. 1, 2019, local authorities must take into account the restrictions and requirements that are specified in the Act when developing or updating local sidewalk vending regulations for both sidewalks and parks. The changes in SB 946 impact property owners, local businesses, public entities, and even the smallest vendors – all of which will need appropriate legal advice and counsel about this new regulatory framework.

What led to SB 946?

In many communities across the state, sidewalk vending struggles under stereotypical perspectives that associate it with monolingual immigrant communities and the resulting fear, misinformation, and criminalization. Some communities have endured years of negotiations and public hearings aimed at adopting rules and regulations that balance the often divergent interests of

stakeholders, without resolution. Adding a sense of urgency and momentum to these protracted discussions, allegations of harassment and targeting by federal immigration authorities ignited a statewide effort to decriminalize sidewalk vending.

How does SB 946 change the status quo?

Under SB 946, local authorities can no longer regulate or ban sidewalk vendors unless they have a licensing system that meets specified requirements. While the purpose of SB 946 is to encourage local authorities to establish an appropriate regulatory regime, the practical effect is to widely open the door to sidewalk vending in cities and counties that do not have a licensing system and allow vending in cities and counties that might not have previously considered allowing it.

What does the Act require and prohibit?

Examples of the Act's requirements 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 the vendor can sell food or merchandise, and (2) cannot restrict sidewalk vendors to operate only in a designated neighborhood or area ex-

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cept when that restriction is directly related to objective health, safety, or welfare concerns. In areas exclusively zoned as residential, a local authority may prohibit stationary sidewalk vendors, but not roaming vendors. 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 the Act approach vending in parks?

Parks present an interesting challenge as local authorities are now generally prohibited from banning sidewalk vending in parks but retain the ability to enact time, place, and manner restrictions on sidewalk vendors in certain limited situations, such as to (1) preserve the public's use and enjoyment of natural resources and recreational activities or (2) prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park. In recognition of situations in which local authorities sign agreements with food and/or merchandise vendors covering one or more years and one or more parks, the Act specifies that local authorities may prohibit stationary sidewalk vendors if the operator of the park has signed an agreement that exclusively allows the sale of food or merchandise by a specific concessionaire in a specified park.

How does the Act decriminalize sidewalk vending?

SB 946 limits penalties for violations of local regulations to administrative fines and requires that criminal prosecutions under a local regulation must be dismissed if they have not reached final judgment. If a city or county imposes administrative fines, SB 946 also requires a process for determining the violator's ability to pay with associated ability to pay options. 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 happens next?

While a flood of new sidewalk vendors might not occur immediately on January 1, 2019, cities and counties can expect to see more, and perhaps more varied, sidewalk vending across the state. Jurisdictions that do not currently allow sidewalk vending must adopt licensing and regulations that are consistent with the Act, and must recognize that traditional criminal enforcement is no longer an option. For cities and counties that do not adopt a regulatory licensing scheme consistent with SB 946, all vendors will be welcome on their already crowded sidewalks. Property owners, local businesses, public entities, and even the smallest vendors will need appropriate legal advice and counsel to navigate the changes.

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