



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: SEPTEMBER 21, 2021
FROM: COMMUNITY & ECONOMIC DEVELOPMENT WARDS: ALL
DEPARTMENT
SUBJECT: SIDEWALK VENDING ORDINANCE - WORKSHOP

ISSUE:

Conduct a workshop to consider proposed changes to Riverside Municipal Code (RMC) Chapter 5.38 regarding sidewalk vending.

RECOMMENDATIONS:

That the City Council:

1. Conduct a workshop on proposed changes to RMC Chapter 5.38 regarding sidewalk vending;
2. Provide guidance regarding the desired regulatory framework for sidewalk vending in the City of Riverside and direct staff to bring back proposed amendments to the existing Riverside Municipal Code 5.38 regarding sidewalk vending for future City Council consideration; or
3. Adopt staff's proposed Revised Ordinance to RMC 5.38 – Attachment 4.

BACKGROUND:

The Governor signed Senate Bill SB 946, and it became effective on January 1, 2019, as Government Code sections 51036 – 51039 (Attachment 2.) This law decriminalizes sidewalk vending with the intent to promote entrepreneurship and economic development opportunities for low-income and immigrant communities. The general rule of SB 946 is that any restriction on a sidewalk vendor must be directly related to an objective health, safety, or welfare concern.

On July 21, 2020, City Council adopted amendments to RMC Chapter 5.38 (Attachment 1), bringing the municipal code into compliance with State Law. At that time, City Council also directed staff to make recommendations for further revisions that were specific to the City of Riverside.

Subsequently, staff made two presentations to the Land Use, Sustainability and Resilience Committee (Committee) on January 11, 2021, and May 27, 2021, to discuss the sidewalk vending ordinance.

Also, pursuant to Committee direction, staff conducted several virtual community roundtable

meetings to provide a background of the project to participants as well as solicit their feedback and perspectives on several topics related to the City's current sidewalk vending ordinance and future direction of the City concerning sidewalk vending.

On May 27, 2021, the Land Use, Sustainability and Resilience Committee directed staff to make changes to the existing sidewalk vending ordinance as outlined in the redlined version "Proposed Ordinance" – (Attachment 3) and clean copy version (Attachment 4).

On July 20, 2021, City Council considered the changes as recommended by the Land Use, Sustainability and Resilience Committee and directed staff to present a workshop to City Council regarding sidewalk vending prior to taking further action on this item.

DISCUSSION:

The following seven topics were raised by City Council on July 20, 2021, as areas that required further discussion or information. When considering additional time, place, and manner regulations, it is important to remember that aside from several specific exceptions, vending restrictions must be based on objective health, safety, and welfare concerns and that economic competition or community animus are not considered a health, safety, or welfare concern.

1) Inclusion of sidewalk vendors in local Business Improvement Districts (BID)

The California Government Code precludes local agencies from requiring sidewalk vendors to get special approval from nongovernmental organizations such as business improvement districts for sidewalk vendors to do business in those districts. Furthermore, local agencies cannot restrict sidewalk vendors from operating in (or outside of) designated areas or neighborhoods without some direct correlation to an objective health, safety, or welfare concern.

"51038 (b) – A local authority's sidewalk vending program shall comply with all of the following standards:

- (3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.*
- (4) A local authority shall not 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."*

Currently, businesses that register their location and physical address within a BID are automatically included in that BID and pay the additional fees on their business tax registration. Should a sidewalk vendor register their business within a BID, they may also be subject to these fees. If a vendor is registered at an address outside of the BID but operates inside the BID, they do not have to pay the BID assessments and would only be required to pay the business tax.

Staff reached out to numerous local BIDs in neighboring jurisdictions but were unable to identify any that have addressed sidewalk vendors or included them in their membership.

There are many other transitory business types such as mobile dog groomers, auto detailers, notaries, cleaning services, etc. that may at times operate within a BID, but by the nature of their business, do not register in or have a fixed location within that BID.

2) Business License/Sales Tax information

The City of Riverside requires prospective sidewalk vendors to obtain a City Business License and Vendor's Permit. The cost of the business license can vary based on the estimated gross annual receipts of the vendor. The Vendor's Permit carries a fee of \$32.00 with a \$9.00 per additional cart fee. Sidewalk vendors are required to submit acceptable identification, proof of a County Health Permit if selling food, an indemnity agreement, the identification of all employees, number, type and location of all vending carts and apparatus and proof of the required liability insurance policy. The Vendor's Permit has a term length of one year and can be revoked by the Permit Officer with cause (see Attachment 10 for the vendor permit application packet).

A total of 12 different street vendors have obtained a Vendor's Permit during the last four years (2018-2021):

2018: 7 active licenses

2019: 10 active licenses

2020: 8 active licenses

2021: 5 active licenses (all are renewals from 2020).

2 additional sidewalk vendors are currently pending application requirements, including payment.

Additionally, the State of California requires a seller's permit, which is free. A seller's permit is required if you are engaged in business in California, intend to sell or lease tangible personal property that would ordinarily be subject to sales tax if sold at retail (this includes wholesalers, manufactures and retailers), or will make sales for a temporary period, normally lasting no longer than 90 days at one or more locations (i.e., fireworks booths, Christmas tree lots, garage sales). Currently, the City encourages vendors to get a seller's permit and educates them that the State requires it, but it's not a requirement for a City business license and does not stop the City process from moving forward if they do not have one.

Sales of food for human consumption is generally exempt from sales tax unless sold in a heated condition (except hot bakery items or hot beverages, such as coffee, sold for a separate price), served as meals, consumed at or on the seller's facilities, ordinarily sold for consumption on or near the seller's parking facility, or sold for consumption where there is an admission charge. Additionally, the exemption for sales of food products includes candy and confectionery, snack foods, and bottled water.

3) Restriction of sidewalk vending during temporary and special events such as Festival of Lights

California Government Code Section 51038 is clear that local agencies are able to enact laws and restrictions regarding sidewalk vending in the vicinity of certified farmer's markets or swap meets and in any areas that are subject to a temporary or special event permit. This would apply to all permitted events on public property such as the Festival of Lights, Tamale or Chili Cook-offs, car shows, parades, concerts, and other festivals or events for which a permit was issued:

"51038 (d) – Notwithstanding subdivision (b), a local authority may do both of the following:

- (1) Prohibit sidewalk vendors in areas within the immediate vicinity of a permitted certified farmer's market or a permitted swap meet during the limited operating hours of that certified farmer's market or swap meet.*
- (2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided*

that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority's temporary special permit are also provided to any sidewalk vendor specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit."

In order to remove some of the ambiguity in the language of State Law and create easily enforceable regulations, "immediate vicinity" would need to be better defined as an actual measurement of distance such as "500 feet."

4) Requirement to collect Social Security Numbers from applicants to obtain Vendor's Permits

California Government Code Section 51038 limits a local agencies requirement to obtain a Social Security Number as a requisite to secure a Vendor's Permit and sets forth other forms of identification in lieu of a Social Security Number that shall be accepted when applying for a license/permit to vend.

"51038 (c) – A local authority may, by ordinance or resolution, adopt additional requirements regulating time, place and manner of sidewalk vending if the requirements are directly related to objective health, safety or welfare concerns, including, but not limited to:

(4) Requiring sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California Driver's License or identification number, an individual taxpayer identification number or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensing program or comply with State Law or state or federal court order."

5) Ability to regulate hours of operation

Government Code Section 51038 (c)(1) regulates hours of operation for sidewalk vending. Although there is an opportunity to regulate hours of operation for sidewalk vending in residential areas, those restrictions cannot be unduly restrictive. Vending hours in non-residential areas shall not be more restrictive than the hours of operation that other businesses on the same street must operate under. In most cases in non-residential areas, there are no restrictions for hours of operation.

6) Comparison of local jurisdiction vending codes

The Comparison Chart (Attachment 11) presents a side-by-side comparison of the key points of the sidewalk vending codes for the cities of Riverside (Attachment 1), Los Angeles (Attachment 9), Pasadena (Attachment 7), Pomona (Attachment 6), Jurupa Valley (Attachment 8) and Anaheim (Attachment 5). Many of these cities are either in close proximity to Riverside, have developed model sidewalk vending ordinances and/or have geographic and other similarities to some of the conditions that exist in the City of Riverside such as large community events, tourist destinations, vibrant entertainment districts, pedestrian malls and other areas with large amounts

of pedestrian and vehicular traffic during certain peak hours.

7) Enforcement

The Code Enforcement Division is the primary agency tasked with enforcing sidewalk vending laws in the City. Code staff partners closely with Riverside Police and Riverside County Health Inspectors to accomplish this. At present, the Code Enforcement Division has 13 Code Enforcement field personnel that can address sidewalk vending. Regular business hours for the Code Enforcement Division are Mon-Friday 7 A.M. until 6 P.M. One Code Enforcement Officer works Saturday and Sunday 7 A.M. to 6 P.M. in conjunction with the Public Safety Engagement Team (PSET), that is available to respond to priority calls for service as needed.

In terms of sidewalk vending enforcement outside of regular business hours, the Code Enforcement Division coordinates periodic weekend and evening vendor enforcement operations with Riverside Police and County Health to address sidewalk vending problem areas.

Since violations of the sidewalk vending ordinance have been decriminalized, Code Enforcement Officers will issue Administrative Citations only for violations of the code. County Health Inspectors are critical to enforcement efforts as they are authorized to take additional enforcement action such as confiscating food items and equipment for violations of County Health and Retail Food Codes. County Health Inspectors have an internal policy which requires law enforcement assistance for safety purposes if they are working any evening details.

The Code Enforcement Division received 352 complaints regarding illegal vending between July 1, 2020 and June 30, 2021.

From a statutory standpoint, Riverside Municipal Code Section 1.17.202 – Administrative Code Enforcement Remedies, defines Enforcement Officers as “any City employee or agent of the City with the authority to enforce any provision of this Code, including, but not limited to, code enforcement, fire prevention and parking services.” This empowers them to issue Administrative Citations for violations of the municipal code pursuant to this code. In addition, Riverside Municipal Code Section 6.08.010 includes “Code Enforcement Manager or his designees” in its definition of enforcement officers for purposes of applying the Regulation of Food Facilities Chapter or the Riverside Municipal Code. This allows Code Enforcement Officers to take enforcement action against sidewalk vendors selling food that do not have a valid Riverside County Health Permit.

California Government Code Section 51039 (d)(1) states: *“A violation of a local authority’s sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.”*

It should be noted that the attached proposed code revisions could be implemented pursuant to the City’s police power, as granted broadly under Article XI, Section 7 of the California Constitution, but there are areas of opportunity to further tailor the Sidewalk Vending Code to meet the needs of the City and the community, as long as those changes are directly related to objective health, safety and welfare concerns and otherwise not specifically disallowed by the California Government Code.

After City Council has adopted the regulatory framework for Sidewalk Vending in the City of Riverside, staff will develop and implement an educational component for the business community

along with written materials and infographics for prospective vendors to use as a guide for properly establishing and operating their business. Part of this campaign will also include references to any organizations or other resources providing financial or other assistance to prospective sidewalk vendors.

STRATEGIC PLAN ALIGNMENT:

This item contributes to Strategic Priority No. 3 Economic Opportunity - Champion a thriving, enduring economy that provides opportunity for all, and the following goals:

3.1 - Facilitate partnerships and programs to develop, attract and retain innovative business sectors.

3.3 - Cultivate a business climate that welcomes innovation, entrepreneurship, and investment.

3.4 - Collaborate with key partners to implement policies and programs that promote local business growth and ensure equitable opportunities for all.

The item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – This item has been vetted through numerous Committees with robust public comment. In addition, two community roundtable meetings were held to solicit feedback from all stakeholders. Staff continues to engage community and team members on a regular basis regarding sidewalk vending. The community meetings were marketed via e-mail blasts to constituent groups and the Greater Riverside Chambers of Commerce, direct messages to advocacy groups, flyer distribution to the actual sidewalk vendors and via City Council newsletters. Roundtable meetings and Committee Meetings were conducted in both English and Spanish.
2. **Equity** – This item is being undertaken to provide equal entrepreneurship opportunities for segments of the business community that have been highly regulated and restricted. Sidewalk vending can be viewed as a cultural treasure in some communities and can serve as not only a means to provide income, but a means to deliver food to underserved or socio-economically disadvantaged segments of the community. Another often overlooked aspect of sidewalk vending is that not only does it open a pathway for new entrepreneurs, it also creates opportunities for existing brick and mortar establishments to branch out and expand their business footprint. Spanish translation services have been provided throughout the meetings at the City Council sub-committee, workshops and the City Council meeting.
3. **Fiscal Responsibility** – Increased sidewalk vending activity in the City of Riverside can potentially generate additional sales tax and permit fee revenue. In addition, it can potentially attract additional visitors to areas such as the Downtown Entertainment District by providing additional dining options, thereby further increasing sales tax revenue for area businesses.
4. **Innovation** – The “street food” culture is a growing trend in many progressive areas of the country. Providing a regulatory framework that encourages this entrepreneurship while still safeguarding the public’s health, safety and welfare would place Riverside among those model cities that are beginning to incorporate this “street food” culture into their downtowns.

5. **Sustainability & Resiliency** – Expanding the concept of sidewalk vending in Riverside would meet the needs of certain segments of the community and if properly approached, maintain the health and safety of the community. Sidewalk vending can be used as a means to bring prosperity and vibrance to a City as well as a vehicle to deliver dining options to underserved areas and provide a means of income to new entrepreneurs during periods of economic downturn.

FISCAL IMPACT:

There is no fiscal impact associated with this report.

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availability of funds: Edward Enriquez, Chief Financial Officer/City Treasurer
Approved by: Rafael Guzman, Assistant City Manager
Approved as to form: Phaedra A. Norton, City Attorney

Attachments:

1. Riverside Municipal Code 5.38 – Sidewalk Vendors
2. California Government Code 51036-51039
3. Proposed Riverside Ordinance - Redline
4. Proposed Riverside Ordinance - Clean Copy
5. City of Anaheim Sidewalk Vending Code
6. City of Pomona Sidewalk Vending Code and Exhibit
7. City of Pasadena Sidewalk Vending Code
8. City of Jurupa Valley Sidewalk Vending Code
9. City of Los Angeles Sidewalk Vending Code and Exhibits
10. Vendor's Permit Application Packet
11. Comparison Chart
12. Presentation