



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: JANUARY 16, 2024**
FROM: COMMUNITY & ECONOMIC DEVELOPMENT **WARDS: ALL**
DEPARTMENT
SUBJECT: SIDEWALK VENDING AND FOOD TRUCK UPDATE

ISSUE:

Receive an update on the educational and enforcement efforts related to the City's Sidewalk Vending Ordinance – RMC 5.38 and Food Truck Ordinance – RMC 5.36, as requested by the City Council.

RECOMMENDATIONS:

That the City Council:

1. Receive and file an update on education and enforcement efforts related to the City's Sidewalk Vending and Food Truck Ordinance.

BACKGROUND:

Senate Bill SB 946 became effective on January 1, 2019, as Government Code sections 51036 – 51039. This law decriminalized 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. The City's existing laws related to sidewalk vending conflicted with numerous provisions of SB 946. The city amended its sidewalk vending ordinance to comply with State law, and on December 7, 2021, adopted amendments to RMC Chapter 5.38 (Attachment 3), bringing the municipal code into compliance with State Law.

Shortly thereafter, the city also adopted amendments to the existing mobile food vending ordinance (food trucks) – RMC 5.36 (attachment 4) - which significantly broadened the allowance for these types of businesses to operate in the city. Staff presented an update to City Council on April 11, 2023, at which time City Council requested an additional update in 6 months.

DISCUSSION:

During the April 11, 2023, Council meeting, Councilmembers Perry and Cervantes requested information on what other local jurisdictions are doing to address unpermitted vendors in their communities to establish "best practices". They also asked staff to explore the possibility of impounding cooking equipment and supplies as a means of enforcement. Last, Councilmember Cervantes requested that staff develop a Violation Notice in both English and Spanish to facilitate

better communication with some of the sidewalk vendors.

Best Practices Survey

Staff surveyed numerous cities in all surrounding counties. Responses were received from four major local municipalities and are detailed in the following table:

Table 1. Best Practices Survey

	ANAHEIM	ONTARIO	POMONA	SAN BERN.	RIVERSIDE
Sidewalk vendors allowed	X	X	X	X	X
Outreach/education program	X	X	X	X	X
Dedicated vendor team					X
7 day/week enforcement					X
Partners with Health Dept.	X		X		X
Issues Admin. Citations	X	X	X		X
Food Trucks allowed	X		X	X	X
Confiscates food/perishables		X		X	X
Staff safety issues/threats	X	X		X	X

All the surveyed cities reported that the biggest challenge they face is the inability to issue more than just an administrative fine.

They all commented that a small percentage of the sidewalk vendors return night after night despite citations and having food confiscated and disposed of. All cities also reported that their operations and resources have been greatly impacted by the proliferation of unpermitted vendors and that additional resources and enforcement authority is needed to address the problems. Last, most reported that the biggest problem lies with the large “sidewalk vending conglomerates” from Los Angeles that field local vending stands throughout the region.

Based on this informal survey, it is evident that most surrounding communities face the same challenges as Riverside and all respondents have a very similar enforcement protocol. In fact, the City of Riverside appears to offer the greatest level of service regarding sidewalk vending and food trucks. The survey did not identify any new strategies that Riverside could implement.

Impounding Cooking Equipment

The concept of impounding cooking equipment is a complex issue and currently the subject of some debate. Staff consulted with numerous local agencies as well as conducted an independent review of applicable State Statutes and concluded that under the statewide sidewalk vending laws (SB946 and SB972) the City of Riverside does not have the authority to empower its code enforcement officers to impound cooking equipment. However, the City retains its ability to summarily abate any public nuisance which presents an “immediate threat to public health or

safety.” (RMC 6.15.021).

The California Retail Food Code, a subsection of the California Health and Safety Code, regulates all food facilities statewide. Food facilities are commonly referred to as restaurants, markets, delis, cafeterias, mobile food facilities, mobile support units, vending machines, and certified farmers' markets. The California Retail Food Code is enforced by the State Department of Public Health and local health agencies. The Riverside County Department of Environmental Health is the local health agency overseeing all Riverside County.

SB 946, effective January 2019, authorized sidewalk vending statewide and explicitly preempted any local regulations that forbade sidewalk vending or subjected sidewalk vendors to criminal penalties. SB 946 allows a local jurisdiction to regulate sidewalk vending only in accordance with the terms of SB 946, and further mandates that any violation of a local sidewalk vending ordinance is only punishable by means of an administrative fine. However, SB 946 explicitly does not affect applicability of the Retail Food Code to sidewalk vendors who sell food.

SB 972, effective January 2023, amended the Retail Food Code by creating the new category of compact mobile food operations, defined as a “pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.” SB 972 removed some regulations that previously applied to sidewalk vendors, making it easier for them to obtain a health permit. SB 972 reaffirmed that any violation of a sidewalk vending regulation is only punishable by means of an administrative fine.

The Retail Food Code requires all food vendors to possess a permit from the local health agency. The Retail Food Code also grants “registered environmental health specialists” (aka health inspectors) the authority to seize food, equipment and utensils that are suspected of being unsanitary. Some local jurisdictions have given their code enforcement officers the same authority as state licensed health inspectors to seize food, equipment, and utensils. The legality of this has not yet been tested in court.

Analysis

The California Retail Food Code section 113705 states that:

“The Legislature finds and declares that the public health interest requires that there be uniform statewide health and sanitation standards for retail food facilities to assure the people of this state that the food will be pure, safe, and unadulterated. Except as provided in Section 113709, it is the intent of the Legislature to occupy the whole field of health and sanitation standards for retail food facilities, and the standards set forth in this part and regulations adopted pursuant to this part shall be exclusive of all local health and sanitation standards relating to retail food facilities.”

This language is clear that the State Retail Food Code intends to be the only governing document for all matters related to food safety, and that local jurisdictions cannot pass additional local laws that supersede, supplant or “work around” the State laws.

Retail Food Code section 114393 grants the State Department of Public Health and local health agencies the authority to seize dangerous food and equipment:

“(a) Based upon inspection findings or other evidence, an enforcement officer may impound food, equipment, or utensils that are found to be, or suspected of being, unsanitary or in such disrepair that food, equipment, or utensils may become contaminated or adulterated, and inspect, impound, or inspect and impound any utensil that is suspected of releasing lead or

cadmium in violation of Section 108860. The enforcement officer may attach a tag to the food, equipment, or utensils that shall be removed only by the enforcement officer following verification that the condition has been corrected.”

To authorize the seizure of equipment of unlicensed sidewalk vendors, some cities have amended their municipal codes to designate their own Code Enforcement Officers as “enforcement officers” who can invoke the power of Section 114393. This is problematic, in that the Retail Food Code defines “enforcement officers” as being “registered environmental health specialists” This is a state certification that requires specific educational requirements and successful completion of an examination. Those are listed in Health and Safety Code and summarized as:

“A valid registration as an environmental health specialist under this article shall only be issued to a person who has:

- (a) Met the applicable education and experience requirements.*
- (b) Successfully passed the examination for registration.*
- (c) Submitted a complete application in accordance with Section 106630.*
- (d) Paid the fees required in Section 106700.*
- (e) Not committed acts specified in subdivision (a) of Section 106715”*

Again, the authority to seize equipment under the Retail Food Code is granted to an “enforcement officer”, who is defined as a “registered environmental health specialist.” The City cannot by local ordinance change state law and grant the authority of a registered environmental health specialist to code enforcement officers. (Unless those code enforcement officers meet the requirements of the Retail Food Code.)

Riverside County Environmental Health Staff stated that prior to new State legislation, they did have authority to impound equipment. However, their county counsel opined that after the passage of SB 946 and SB 972, which decriminalized sidewalk vending and limited enforcement to specific administrative penalties, impounding equipment for violating the county sidewalk vending ordinance is no longer allowable as it is punitive in nature and beyond the scope of authority granted in State Law. However, City staff believes that impounding equipment for non-punitive reasons, such as nuisance abatement, can arguably be justified.

Other Jurisdictions

The City of Orange used to enforce their sidewalk vending ordinance in the same manner as the City of Riverside. They conducted joint operations with Orange County Environmental Health who impounded equipment under the authority of the Retail Food Code. It became difficult for the City to coordinate frequent enough operations with County Health, so the City of Orange in July of 2023 amended their ordinance to grant their code enforcement officers the same impound authority as County Health Inspectors. The City of Orange’s ordinance cites Retail Food Code section 114393 as the authority to impound equipment, but it does not address specifically how they conveyed that authority to their code officers.

The City of Fontana amended its sidewalk vending ordinance on September 12, 2023, authorizing its code enforcement officers to impound cooking equipment. Fontana cited, without explanation, Retail Food Code section 114393 - the same authority cited by the City of Orange. The adoption of this amendment was challenged at the Council meeting by numerous sidewalk vendor activists and advocate groups.

The City of Santa Clarita, a general law city, presents an interesting scenario in which they

impounded cooking equipment under their summary abatement ordinance for posing an “immediate threat or hazard or danger to persons or property.” Santa Clarita seized equipment more than a dozen times against one uncooperative stationary sidewalk vendor. Even this action did not discourage the vendor from continuously operating illegally in their city. The City of Santa Clarita has recently filed a Complaint for Preliminary and Permanent Injunction suit against this operator to abate the “public nuisance.”

The cities of Santa Ana and Anaheim do not impound cooking equipment on their own authority. Instead, they conduct joint operations with Orange County Environmental Health and defer to the county’s environmental health specialists to exercise the seizure authority of Section 114393. Most local agencies leave the issue of impounding cooking equipment to their associated County Health Departments.

In summary, the state sidewalk vending laws (SB 946 and SB 972) do not authorize Code Enforcement Officers to impound equipment from sidewalk vendors found to be in violation of the City’s sidewalk vending ordinance. (RMC 5.38). Unpermitted food items themselves can be summarily abated as a nuisance per the Riverside Municipal Code as the unpermitted food itself causes the nuisance, not the equipment used to prepare such food. Code Enforcement Officers do not fall under the State definition of “Enforcement Officer” since they are not registered environmental health specialists and the Health and Safety Code intends to occupy the whole space in terms standards for retail food facilities. City code enforcement staff cannot use the authority of the Retail Food Code to impound cooking equipment. There may be authority to impound cooking equipment under the City’s existing authority to summarily abate a public nuisance in cases of manifest public danger and/or immediate necessity. The Building Official or the Code Enforcement Manager, or their designees, have the authority to immediately abate any public nuisance which presents an immediate threat to public health or safety.

Spanish Translation

Councilmember Cervantes requested that the Violation Letters that staff issues to sidewalk vendors also be translated into Spanish to ensure that the regulations are clearly understood. To that end, staff developed a dual language form (Attachment 5) that has both English and Spanish. Aside from this Violation Notice. All existing informational flyers and brochures as discussed in previous updates are also in both English and Spanish. Each vendor outreach shift will include at least one bilingual staff member as well.

Statistics

As of this report, the City of Riverside Business Licensing Division has recorded 31 active business licenses/vendor permits associated with sidewalk vendors. (Attachment 1).

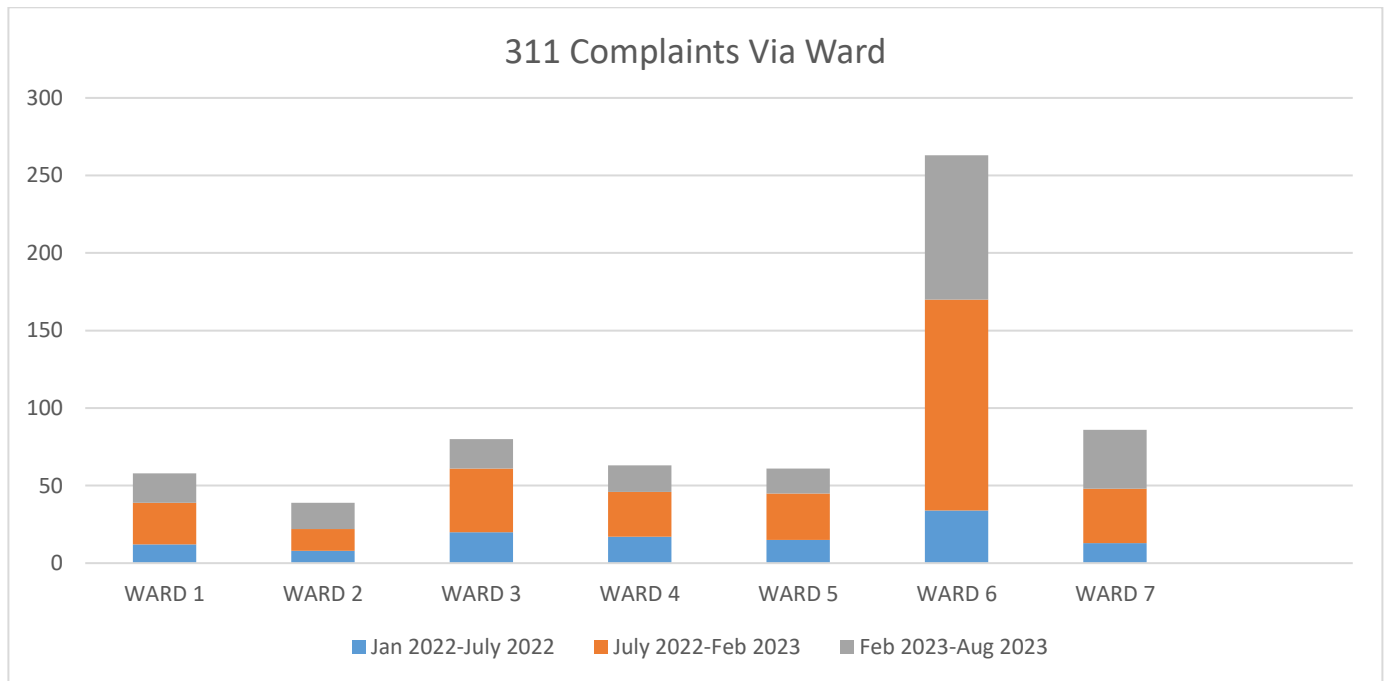
Business Licensing reports 22 business licenses for food trucks in the city (Attachment 2).

The following metrics reflect the sidewalk and mobile vending education and enforcement activity since the adoption and implementation of the City’s sidewalk and mobile vending ordinances:

Table 2. Number of Sidewalk Vendor complaints via 311 by Ward – numeric

WARD	Jan 2022 - July 2022	July 2022 - Feb 2023	Feb 2023 - August 2023
1	12	27	19
2	8	14	17
3	20	41	19

4	17	29	17
5	15	30	16
6	34	136	93
7	13	35	38
TOTAL	119	553	231

Table 3. Number of Sidewalk Vendor complaints via 311 by Ward – graphic

- Number of sidewalk vendors contacted proactively: 913
- Administrative Citations issued to sidewalk vendors: 219
- Number of Food Truck complaints: 11
- Number of Administrative Citations issued to Food Trucks: 3
- Approximate pounds of unpermitted/hazardous food abated: 43,135 lbs.
- Number of joint City/County enforcement operations: 6

Observations and Challenges

Many sidewalk vendors that staff is encountering are unpermitted/unlicensed stationary taco vendors that set up a larger scale cooking and serving area with EZ up, lighting, customer seating, etc. in the City's rights-of-way. These vendors have primarily been from Los Angeles and tend to require numerous contacts/citations/enforcement action before they comply. Most employees do not possess I.D. or refuse to provide it. Staff have also learned that most employees are poorly paid and are cautioned by their employer not to speak with or cooperate with City Officials. It is our belief that the people staffing the vending locations are possibly being exploited by their employers.

Staff has observed that many of the out of area vendors are connected to one or several operators who drop them off in several locations in the city each night. Operators often use fully stocked secondary vehicles to replenish food supplies at the stands as needed to avoid having their product confiscated/destroyed by Health Inspectors. These vendors are also adapting to City enforcement efforts by attempting to identify Code Enforcement work schedules and utilizing

“lookouts” to alert operators that Code Enforcement is nearby and even follow Code Officers at times to observe their patterns. Food truck activity has seen an increase in frequency, but in general, most of the food trucks encountered possess all the required permits/approvals, are operating legally and/or are willing to comply. It is also worth noting that food trucks represent less than 1% of complaints.

STRATEGIC PLAN ALIGNMENT:

Strategic Priority 3 - Economic Opportunity: Champion a thriving, enduring economy that provides opportunity for all.

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.
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- 1. **Community Trust** – This item has been vetted through numerous Committees with robust public comment. Staff continues to engage community and team members on a regular basis regarding sidewalk vending.
 - 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 and mobile 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, but it also creates opportunities for existing brick and mortar establishments to branch out and expand their business footprint.
 - 3. **Fiscal Responsibility** – Increased sidewalk and mobile 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 and mobile 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 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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Certified as to
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Approved as to form: Phaedra A. Norton, City Attorney

Attachments:

- 1) List of vendor permits
- 2) List of food truck licenses
- 3) Riverside Municipal Code 5.36
- 4) Riverside Municipal Code 5.38
- 5) English/Spanish Notice
- 6) Presentation