



Claremont City Council

Agenda Report

File #: 2954

Item No: 15.

TO: TARA SCHULTZ, CITY MANAGER

FROM: CHRISTOPHER M. PAULSON, INTERIM ASSISTANT CITY MANAGER

DATE: JUNE 25, 2019

Reviewed by:

City Manager: TS

Finance Director: AP

SUBJECT:

CLAREMONT MUNICIPAL CODE AMENDMENT REGULATING SIDEWALK VENDORS IN COMPLIANCE WITH CALIFORNIA SENATE BILL 946

SUMMARY

On September 17, 2018, Governor Jerry Brown signed Senate Bill 946, which requires all cities to allow sidewalk vending as a “by right” business. The bill went into effect on January 1, 2019. The law allows cities to establish a licensing requirement with certain limited regulations for sidewalk vendors. Local jurisdictions that desire to regulate sidewalk vending are required to first adopt a program with rules and regulations consistent with the new law.

Portions of the Claremont Municipal Code (CMC) are presently in conflict with some of the requirements of SB 946, which is why staff recommends that the City Council adopt a regulating ordinance addressing sidewalk vending activity. Adopting an ordinance and regulatory framework will ensure the health, safety, and welfare of the public.

If the City Council desires to regulate sidewalk vending, the City’s Municipal Code must be revised. Staff has drafted an ordinance (Attachment A) establishing a licensing program to permit and regulate sidewalk vendors in compliance with SB 946 while still retaining the community’s quality of life. Staff has also prepared a resolution (Attachment B) establishing street vending application and appeal fees.

RECOMMENDATION

Staff recommends that the City Council:

- A. Introduce AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAREMONT, CALIFORNIA, ADDING CHAPTER 5.50 TO THE CLAREMONT MUNICIPAL CODE AND AMENDING SECTION 5.40.010 AND CHAPTER 11.02.090 OF THE CLAREMONT

- MUNICIPAL CODE, RELATING TO REGULATION OF STREET VENDORS; and
- B. Adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAREMONT, CALIFORNIA, ESTABLISHING FEE SCHEDULE FOR SIDEWALK VENDING REGULATIONS SET FORTH IN CHAPTER 5.50 OF THE CLAREMONT MUNICIPAL CODE.

ALTERNATIVES TO RECOMMENDATION

In addition to the recommendation, there are the following alternatives:

- A. Request additional information.
- B. Do not take action.

FINANCIAL REVIEW

Costs to administer the program are dependent on how many applications will be received and enforcement activity that will be necessary. The cost associated with the issuance and administration of a sidewalk vendor permit is proposed to be recovered through an application fee of \$471.28. The proposed fee is based on the estimated amount of staff time to process the application and issue the permit. An appeal fee of \$210.00 is also proposed.

The staff time to research this item and prepare this staff report is estimated at \$4,252 and is included in the operating budgets of the Administrative Services, Community Development, Human Services, and Police Departments.

ANALYSIS

The draft ordinance establishes CMC Chapter 5.50 for the regulation of sidewalk vending. The proposed program is consistent with SB 946 in that it facilitates the entrepreneurial spirit of small business activities by removing the total prohibition on selling goods from portable stands. While allowing more sidewalk vending, the City equally recognizes the importance of regulation and enforcement of sidewalk vendor activities to promote the health, safety, and welfare of the public.

The City's proposed program includes regulations that are necessary to:

- (1) Ensure no interference with:
 - a. The performance of police, firefighter, and emergency medical personnel services;
 - b. The flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles;
- (2) Provide reasonable access for the use and maintenance of sidewalks, pathways, poles, posts, traffic signs or signals, hydrants, restrooms, trash receptacles, firefighting apparatus, mailboxes, as well as access to locations used for public transportation services;
- (3) Maximize public access to parks and other community areas;

- (4) Protect the public's use and enjoyment of natural resources;
- (5) Prevent unreasonable interference with the scenic and natural resource features of parks;
- (6) Reduce exposure to the City for personal injury or property damage claims and litigation;
- (7) Ensure sidewalk vending activities only occur in locations where such vending activities would not restrict sidewalk and pathway access and enjoyment to individuals with disabilities; and
- (8) Maintain public access to recreation and public art.

The following sections provide an overview of some of the rules and regulations put in place by the program.

Permitting Requirements

Government Code Section 51038(C)(4) allows a local authority to require a sidewalk vendor to obtain a permit, subject to certain limitations.

Consistent with SB 946, the City's proposed program would require a valid permit to engage in any sidewalk vendor activities. A permit enables the City to effectively regulate individuals who are engaging in sidewalk vending activities. It would further help to ensure sidewalk vendors are complying equally with the rules and regulations set forth by the program.

City staff will issue a permit to an individual when the requirements set forth in Section 5.50.020 to obtain said permit are met. Permit administration costs will be recovered through the application and permit fee. Since there is no sidewalk vending permit history, a flat fee of \$471.28 based on an estimate of time to be spent on the permit process is proposed. A resolution establishing the permit fee for sidewalk vending is attached. Also included in the resolution is a fee of \$210.00 to appeal a denial of a permit.

Limitation on Hours of Operation

Government Code Section 51038(C)(1) allows a local authority to place limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations imposed on other businesses or uses on the same street. Therefore, the proposed program in nonresidential areas would limit hours of operation for sidewalk vending from 7 a.m. to 10 p.m., daily, which is consistent with most business operations throughout the City, or consistent with the hours of operation of other businesses on the same street, as required by SB 946. The proposed limitation is comparable and further takes into account the potential for sidewalk vending in mixed-use areas, which have both residential and nonresidential uses.

In residential areas, all stationary sidewalk vending is prohibited. In residential areas, roaming sidewalk vending activity is prohibited between the hours of 6:00 p.m. or sunset, whichever is earlier, and 9:00 a.m. of the following day, Monday through Saturday, inclusive, and all day on Sundays and federal holidays. These areas tend to be more sensitive to noise and traffic impacts and, therefore, warrant a smaller operational window.

Location and Distance Restrictions

Government Code Section 51038(b)(1) prohibits a local authority from requiring a vendor to operate in specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

The City ensures the safety of over 36,000 residents and thousands of visitors annually. These people frequent several unique locations and rely heavily on safely utilizing the public right-of-way in these areas. Obstructions of the use of the right-of-way could pose a health and safety concern, especially in the most heavily used areas of the City.

The City has a unique physical setting with many visual, recreational, and environmental resources that has influenced the type and form of land uses within the community. Much of the City is fully developed with a diverse mixture of residential, institutional, commercial, business park, recreational and open space uses.

Many of the sidewalks within the City are narrow with a width of less than eight feet. Given the amount of pedestrian activity, most of the public realm has been improved with public-serving amenities, such as trash receptacles, benches, bike racks, and street trees.

The proposed program contains numerous locational and distance restrictions to ensure public health, safety and welfare. For example, care was taken to, among other things:

- Avoid unreasonable interference with pedestrian accessibility and flows;
- Limit concentrations of sidewalk vendors in proximity to each other;
- Recognize land uses that are sensitive receptors to noise and activity that is disruptive to day-to-day operations;
- Prevent obstructions to access to important public facilities and interference with activities of emergency services personnel; and
- Incorporate applicable requirements of the California Fire Code.

Enforcement, Penalties, and Appeals

Government Code Section 51039 outlines punitive limitations on sidewalk vendors for violating parameters of the City's program.

The program encourages efficient enforcement through its operating conditions, such as requiring conspicuous display of a sidewalk vendor permit and requiring the allowance of certain City officials to inspect the operation.

Violations of CMC Chapter 5.50, Regulation of Sidewalk Vendors would be enforced through administrative fines established in SB 946 and potential revocation of an issued permit. Also included is an appeals framework, which provides due process for individuals who disagree with an issued administrative citation or who desire to contest revocation of an issued permit.

CEQA REVIEW

Adoption of the proposed ordinance is not subject to environmental review under the California

Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a “project” as defined in Section 15378). CEQA Guidelines Section 15378(b)(2) excludes “[c]ontinuing administrative. . . activities, such as . . . general policy and procedure making” and Section 15378(b)(5) excludes “[o]rganizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment” from its definition of “project.”

Even if this item were a “project,” it would be exempt from environmental review under CEQA Guidelines Section 15061(b)(3)’s “general rule” that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Here, it can be seen with certainty that there is no possibility that this item, in and of itself, will have a significant effect on the environment. On its own, this action will not result in any physical changes to the environment.

PUBLIC NOTICE PROCESS

This item has been noticed through the regular agenda notification process. Copies are available at the City Hall public counter, the Youth Activity Center, the Alexander Hughes Community Center, and the City website.

Submitted by:

Brad Johnson
Community Development Director

Prepared by:

Jason Barber
Community Improvement Coordinator

Attachments:

A - Ordinance Regulating Sidewalk Vending
B - Resolution Setting Sidewalk Vending Fees