



DATE: May 21, 2019

CATEGORY: New Business

DEPT.: City Attorney's Office

TITLE: **Ordinance Amending Chapter 15, Article II of the Mountain View City Code Related to Mobile Vendors**

RECOMMENDATION

Introduce an Ordinance Amending Chapter 15, Article II of the Mountain View City Code Related to Mobile Vendors, to be read in title only, further reading waived, and set a second reading for June 11, 2019 (Attachment 1 to the Council report).

BACKGROUND

In September 2018, the State Legislature passed legislation (Senate Bill 946) restricting local agencies' authority to regulate sidewalk vendors and limiting enforcement of local regulations to administrative fines. The legislation took effect January 1, 2019. Chapter 15, Article II of the Mountain View City Code regulates mobile vendors, which includes vendors on the public sidewalk. The following analysis provides an overview of the State legislation and its effect on existing City regulations. The proposed ordinance amends the City's mobile vending provisions to bring the City Code into conformance with State law.

Since the effective date of Senate Bill 946, the City has suspended enforcement of those provisions that are inconsistent with the recent State legislation as applied to sidewalk vendors. To conform to the penalty requirements, the City has modified its administrative penalty schedule to reflect the fine amounts authorized under State law.

ANALYSIS

Under Senate Bill 946, sidewalk vendors are defined to include persons vending food or merchandise from a pushcart, stand, display, cart, or other nonmotorized conveyance, or from one's person upon a public sidewalk or pedestrian path. Senate Bill 946 restricts local agency authority to regulate sidewalk vendors. The proposed ordinance modifies the City Code provisions regulating sidewalk vendors to conform to the new State law. It should also be noted that because State law authorizes the City to enact

time, place, and manner regulations that are directly related to objective health, safety, or welfare concerns, many of the City's regulations did not require modification as they already conform.

In addition, staff recommends referencing in the mobile vending provisions the requirement that mobile food vendors comply with the City's prohibition on use of polystyrene foam food service ware. While the City Code already prohibits mobile food vendors from the use of such foam service ware, including a reference in the mobile food vending provisions of the Code would help notify mobile food vendors that this requirement applies to them.

Application and Permit Requirements

State law authorizes local agencies to require a permit to operate sidewalk vending provided it complies with specified criteria. The proposed ordinance includes revisions to the City's mobile vending permit application process to comply with these requirements, which includes allowance of other forms of identification besides a Social Security number for all mobile vendor applicants and the exclusion of sidewalk vendors from stating whether a prior vending permit has been issued.

Currently, the City Code authorizes suspension or revocation of a mobile vending permit for violation of the mobile vending regulations. Violation of three or more provisions during the same year is grounds for revocation of the permit. Senate Bill 946 does not, however, authorize the suspension of a permit as applied to sidewalk vendors and requires four or more violations before a permit may be revoked. As such, the proposed ordinance eliminates the ability to suspend a mobile vending permit issued to a sidewalk vendor and authorizes revocation of a permit only after four or more violations. For ease of enforcement, four or more violations will be required to revoke all mobile vending permits, not just sidewalk vendors.

Continuation of a business that presents a substantial danger to the public health, safety, or welfare due to acts committed by the vendor remains a basis to suspend or revoke a permit for mobile vendors other than sidewalk vendors. However, to conform to State law, sidewalk vendors cannot have their permits revoked upon such a basis and are subject to revocation only upon four or more violations.

In addition, Senate Bill 946 only authorizes revocation of a sidewalk vending permit for the remaining term of the permit. Under the City Code, vendors who wish to obtain a new permit after having a permit revoked are not eligible to apply for a new permit for one year after the date of the revocation. This regulation has been modified as applied

to sidewalk vendors and limits the revocation period to the remainder of the permit term, removing the one-year ineligibility provision.

Penalty Provisions

Violations cannot be punished criminally, only administratively and pursuant to an ability-to-pay determination when requested. Administrative fines for violations, with the exception of vending without a permit, cannot exceed \$100, \$200, and \$500 for a first, second, and each additional violation within one year of the first violation, respectively. Administrative fines for vending without a permit may have a maximum fine of \$250, \$500, and \$1,000 for the first, second, and subsequent violations within one year of the first. The City has already modified its administrative penalty schedule to conform to State law. For ease of enforcement, these revisions apply to all mobile vendors. Violators shall be provided a notice of their right to request an ability-to-pay determination, and the City will provide instructions on how to make such a request. The City has already implemented an ability-to-pay notice and application form to comply with this requirement.

Operational Requirements

Parks

The City Code generally prohibits mobile vendors from vending in parks or playgrounds.¹ Senate Bill 946 expressly allows sidewalk vendors to vend in a City-owned or operated park with limited exception inapplicable to the City.² The City does retain the ability to regulate the time, place, and manner of vending in City parks if the requirements are directly related to objective health, safety, or welfare concerns; necessary to ensure the public's use and enjoyment of the park or recreational opportunities; or necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

¹ Mountain View City Code Section 38.9(b) prohibits all commercial activities except as permitted by Section 38.11, which allows commercial use for Council-approved activities or under Article III of Chapter 38, which regulates the use of City Hall, Center for the Performing Arts, and City Plazas.

² A local agency may prohibit a stationary sidewalk vendor, a vendor that vends from a fixed location, from vending in the park only if the operator of the park has signed an exclusive concessions agreement for sale of food or merchandise by the concessionaire. Because the City does not have an exclusive concessions agreement with a concessionaire, this exception is inapplicable. Even if it applied, roaming sidewalk vendors, vendors that move from place to place and stop only to complete a transaction would still be allowed, albeit subject to appropriate time, place, and manner regulations.

The proposed revisions authorize sidewalk vendors to vend in a public park during park hours except where vending is prohibited: (1) in reserved, City-sponsored event or special event areas (including the barbecue areas and athletic fields) and a buffer of 50', excluding public sidewalks, to keep the use and enjoyment thereof private for the reserved time and/or limited to the City-sponsored or special event that has been approved, and to facilitate ingress and egress; (2) within 50', excluding public sidewalks, from an entry or exit to a public facility such as the Community Center, the Library, Cuesta Tennis Center, and swimming pools to keep this area clear for ingress and egress, and to prevent concentration of vendors at these locations; and (3) from public park benches or tables to maintain these for use by patrons of the park as intended. In addition, sidewalk vendors vending from any device other than their person (e.g., a cart, wagon, or stand) must stay on the sidewalk or paved pathway to avoid damage to the grass area and irrigation system that a device could cause if taken off the sidewalk or paved pathway. Vendors must not impede or obstruct access to the sidewalk, including Americans with Disabilities Act (ADA) accessibility. Finally, sidewalk vendors in parks, like vendors elsewhere, are subject to the general operating requirements set forth in the City Code, including, for example, vending at least 100' from any school facility, including playgrounds, and proper disposal of trash.

Other Operational Requirements

Senate Bill 946 authorizes the City to enact time, place, and manner regulations directly related to objective health, safety, or welfare concerns, including, but not limited to hours of operation that are not unduly restrictive (with certain parameters); sanitary condition requirements; and ADA compliance requirements.

Mobile vendors are currently allowed to operate from 7:00 a.m. to 10:00 p.m. unless authorized to operate during different hours pursuant to a temporary use permit. The proposed ordinance authorizes sidewalk vendors in nonresidential areas to vend during the same hours as any other business on the same street if earlier or later than 7:00 a.m. and 10:00 p.m. to conform to State law. Vendors in residential areas will still be limited to the hours of 7:00 a.m. to 10:00 p.m.

FISCAL IMPACT

Any fiscal impact is limited to the change in administrative penalty amounts, including a reduction to 20 percent of the fine amount for those vendors that demonstrate an inability to pay. Over the past several years, the City only issued a few citations in total and, therefore, the fiscal impact is expected to be minimal.

ALTERNATIVES

1. Do not introduce the proposed ordinance.
2. Direct staff to make other changes to the proposed ordinance.

PUBLIC NOTICING

Agenda posting and notice of the agenda item mailed to mobile vendor permit holders.

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NCW/PdC/5/CAM
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Attachment: 1. Proposed Ordinance