



**CITY OF HAWAIIAN GARDENS
CITY COUNCIL
STAFF REPORT**

Agenda Item #{{section.number}}2

DATE: July 11, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Ernesto Marquez, City Manager

BY: Elise McCaleb, Community Development Director
Megan Garibaldi, City Attorney

RECOMMENDATION:

Recommendation to conduct second reading of Ordinance No. 2023-611 entitled: An Ordinance of the City Council of the City of Hawaiian Gardens, California, repealing and replacing Chapter 5.30 to Title 5 of the Hawaiian Gardens Municipal Code, imposing regulations on sidewalk vending in compliance with Senate Bill 946 and 972.

SUMMARY

On September 17, 2018, Governor Jerry Brown signed Senate Bill 946, which establishes statewide governance of vending in the public right-of-way and parks. The bill went into effect on January 1, 2019. Local jurisdictions that wish to regulate sidewalk vending are required to first adopt an ordinance establishing rules and regulations consistent with SB 946. Staff has drafted the attached ordinance establishing a permit procedure and regulations regarding sidewalk vending in compliance with SB 946. SB 972 took effect on January 1, 2023, and decriminalized sidewalk food vending under the California Retail Food Code.

BACKGROUND:

Senate Bill No. 946 ("SB 946") made the regulation and criminalization of sidewalk vending a matter of statewide concern. The new law was enacted to promote entrepreneurship and to provide economic development opportunities for immigrant and low-income communities. The Legislature found that sidewalk vending increases access to desired goods (such as culturally significant food and merchandise) and contributes to safe and dynamic public spaces. State lawmakers also sought to take a stand against aggressive federal immigration policies that prioritized the deportation of persons charged with minor offenses, including violation of local street vending ordinances. Accordingly, SB 946 was enacted to decriminalize sidewalk vending and to encourage local authorities to properly regulate the activity. To this end, a city or county may no longer prohibit or

regulate sidewalk vending in the public right-of-way or in public parks except in accordance with California Government Code sections 51036 through 51039.

For purposes of SB 946, a “sidewalk vendor” refers to a person who sells “food or merchandise” from any “non-motorized conveyance” (such as a pushcart, a stand, or even from one’s person) upon “a public sidewalk or other pedestrian path.” Accordingly, vending from motor vehicles, including food trucks, and vending along roads or other public spaces not designated for pedestrian travel (e.g., parking lots) fall outside the scope of the new law.

Decriminalizing violations.

SB 946 prohibits California cities from criminalizing sidewalk vending violations. Rather, state law now sets forth a mandated schedule of administrative fines as the only permissible penalty for vending violations and also requires local authorities to consider a person’s ability to pay when assessing fines.

Similarly, SB 972 decriminalized the California Retail Food Code. This means that cities may no longer issue criminal citations to food vendors for lack of a county health food vending permit. Cities may continue to issue administrative citations for violations of the California Retail Food Code and continue to inspect food vending carts and preparation kitchens.

Permitted regulation.

In addition to decriminalizing the activity, SB 946 restricts a city’s authority to prohibit sidewalk vending outright. State law now recognizes sidewalk vending as a legitimate way of earning a living and any regulatory program must comply with the following requirements:

- In general, a city may not restrict sidewalk vending in the public right-of-way or restrict the overall number of vendors permitted to operate within the city unless the restriction is “directly related to objective health, safety, or welfare concerns.” For example, a city may restrict vending at a location that could not accommodate both the activity and the minimum pedestrian clearance required by objective state and federal disability access standards.
- “Perceived community animus or economic competition” does not constitute an objective public concern. The City also cannot require sidewalk vendors to obtain the consent or approval of residents or local businesses before being permitted to operate.
- In short, the City may adopt objective time, place, and manner regulations for sidewalk vending. The City also may, and may most readily, implement such regulations by requiring vendors to obtain a local license before engaging in the activity.

- However, irrespective of local regulations, sidewalk vendors of food are subject to the requirements of the California Retail Food Code. SB 946 expressly provides that the new law does not exempt sidewalk vending from state health and safety regulations and permit requirements.
- State law also distinguishes between “stationary sidewalk vendors” and “roaming sidewalk vendors” (or between vendors permitted to operate from a fixed location and vendors who move from location to location, stopping only to complete a transaction). In brief, stationary vendors may be prohibited from residential zones and certain public parks, while roaming vendors may not.
- Outside the public right-of-way, SB 946 authorizes greater restrictions in the following locations:
 - *Residential zones.* Stationary sidewalk vendors may be prohibited outright in residential zones, but roaming vendors may only be restricted for reasons directly related to objective health, safety, or welfare concerns (e.g., reasonable restrictions on hours of operation would be permissible).
 - *Permitted temporary events.* Cities may prohibit vending within the “immediate vicinity” of a permitted special event, including a certified farmers’ market or swap meet, *during the limited duration of the event.*
 - *Public parks* (including recreational facilities). Stationary vendors may be prohibited outright from operating in a park for which the city has entered an exclusive concessionaire agreement. Otherwise, vendors may be restricted in city parks pursuant to any of the following types of regulations:
 - Directly related to objective health, safety, or welfare concerns;
 - Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities; or
 - Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.
 - Finally, SB 946 does not require local authorities to adopt a new regulatory program for sidewalk vending, if an existing program substantially complies with state requirements. However, absent such regulations, a city may not cite, fine, or prosecute a sidewalk vendor for violating any rule that is inconsistent with the default rules set forth in state law, which are largely limited to minimal food safety regulations.

The City's Existing Regulatory Scheme

The City currently regulates solicitors, peddlers, and vendors through Chapter 5.30 of the Hawaiian Garden's Municipal Code. With the State's adoption of SB 946, Chapter 5.30 is outdated and inconsistent with the new state laws. Therefore, staff has drafted an ordinance which will repeal Chapter 5.30 and replace it with a new sidewalk vending regulation.

DISCUSSION:

The attached ordinance proposes to repeal and replace Hawaiian Gardens Municipal Code Chapter 5.30 to regulate sidewalk vending in the public right-of-way. The proposed program is consistent with SB 946 and SB 972 as it removes certain outdated prohibitions on selling goods from portable stands within the public right-of-way in the current Chapter 5.30. In addition, the ordinance sets operational restrictions that are objective in consideration of the protection of public health, safety and welfare.

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

1. Ensure no interference with:
 - a. The performance of police, fire, and emergency medical personnel services;
 - b. The flow of pedestrian or vehicular traffic including ingress 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. Reduce exposure to the City for personal injury or property damage claims and litigation; and
4. 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.

The following sections provide an overview of some of the rules and regulations proposed in the Ordinance.

Stationary versus Roaming Vendors:

SB 946 establishes two forms of sidewalk vending: stationary vending, and roaming vending. In general terms, a Sidewalk Vendor or Vending means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk

or other pedestrian path.

For a Roaming Vendor, the vendor moves from place to place and stops only to complete a transaction. Upon completion of the transaction, the Roaming Vendor would move to a new location and patron. In contrast, a Stationary Vendor may set up operation in one location as permitted by the regulations of the proposed ordinance, and wait for patrons to approach the vendor, with no requirement to move upon completion of patron transactions.

The proposed ordinance establishes rules for the operation of each type of Sidewalk Vendor, and identifies restrictions on when and where the vendor may operate.

Permitting Requirements:

SB 946 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.

The Community Development Director would issue a permit to a sidewalk vendor when the requirements in the Ordinance are satisfied. These requirements generally include providing a list of all persons associated with the business, performing a LiveScan check, providing a list of proposed locations where the street vending would occur, providing a site plan to demonstrate that sufficient area per ADA requirements are being met, meeting all separation requirements, insurance, and providing proof of all required state and county licenses and permits and appropriate tax ID information.

Fees:

City staff will need to conduct an internal study to determine an appropriate application fee for appropriate cost recovery of staff time associated with the processing of the applications. A separate fee resolution will be presented to Council at a later date upon conclusion of the fee study.

Limitation on Hours of Operation:

SB 946 allows local authority to place limitations on hours of operations 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.

For commercial, industrial, and mixed-use zones, the proposed program indicates that sidewalk vending may occur during the operating hours of the businesses located

adjacent to the street which the vending occurs. If no business operations exist, the sidewalk vending operation hours would be limited from 8:00am to 9:00pm, daily.

In residential zones, hours of operation for roaming sidewalk vending would be limited to 8:00am to 9:00pm. Due to these residential areas being more sensitive to noise and traffic impacts, the City could impose a smaller operational window.

Location Restrictions:

A number of sensitive and emergency response/law enforcement land uses are located throughout the City, including Sheriff's and fire stations, the civic center, schools and religious institutions. The majority of the City is fully developed with a diverse mixture of residential, institutional, commercial, industrial, and recreational and open spaces.

Many of the sidewalks within the City are narrow, with a width of less than eight (8) feet. The sidewalk and public rights-of-way have also been improved with public serving amenities such as trash receptacles, benches, bus stops, and street trees. Utility poles and boxes are also prevalent fixtures in the public right-of-way throughout the city. In addition, there are a number of areas with red curbing to prohibit vehicular parking and obstruction of the visual field to help ensure the public's safety and welfare. Due to the configuration of the rights-of-way and the existing infrastructure and amenities, a number of siting restrictions are proposed within the ordinance to protect the public health, safety, and welfare.

The following table summarizes some additional notable location restrictions and the justification for these restrictions to protect the public health, safety and welfare.

Location Restriction	Justification
At least 200 feet from a police station, fire station, civic center, or other emergency facilities.	These facilities are high in activity with emergency services personnel activated and entering or exiting facilities during an emergency. Unimpaired access is necessary to ensure public health and safety services are provided whenever needed.
At least 200 feet from the entrance of a temporary special event permit location.	This is consistent with SB 946, which allows prohibition of sidewalk vendors in the immediate vicinity of permitted activities. This will allow food vending within the special event area, but not immediately outside of the entrance of the event, in order to mitigate the impacts of traffic associated with the special event.
At least 500 feet from any public or private schools for elementary, junior high or high school students.	These land uses are sensitive receptors to noise and any activity that is disruptive to day-to-day operations and the overall welfare of said uses. In addition, any

	queuing around a school can pose a safety issue with children entering and exiting before and after school. Adjacency of sidewalk vendors near these uses could also attract minors to go off-site.
At least 20 feet from the entrance way to any building, store, theater, movie house, house of worship, or place of public assembly.	Any queuing in front of these facilities where there is an expectation of a large number of people maneuvering throughout the area can pose a safety issue.
Stationary sidewalk vendors are not permitted in any park where City has signed an agreement for concessions that exclusively permits sale of food or merchandise by a single concessionaire.	This restriction is consistent with SB 946, which allows the City to prohibit stationary sidewalk vendors in public parks that have a single-concessionaire agreement. Per State requirements, roaming vendors are not affected by this restriction.
Stationary sidewalk vendors not permitted in any exclusively residential areas.	This restriction is consistent with SB 946, which allows the prohibition of stationary sidewalk vendors in areas zoned exclusively residential. Per State requirements, roaming vendors are not affected by this restriction.

Sidewalk Vending in Parks:

SB 946 allows local jurisdictions to adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned and operated by the local jurisdiction if the requirements are directly related to objective health, safety or welfare concerns. As proposed in the ordinance, stationary street vending would be prohibited in areas exclusively zoned residential. In addition, all stationary street vending activities would be prohibited in parks with a concession stand operated by a vendor under exclusive contract with the City selling food or merchandise. If there are no exclusive concessionaires, both stationary and roaming sidewalk vending within parks would be permissible, subject to the regulations set forth in the ordinance and permitting requirements. In addition, stationary and roaming vendors would need to cease operations within the parks at least one hour prior to close of the park.

Enforcement, Penalties, and Appeals:

SB 946 outlines limitations on criminally prosecuting 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 vending permit and allowing City officials to inspect the operation at all times. Violations of the Ordinance would be enforced through administrative fines established in SB 946 and

potential revocation of an issued permit after repeated violations. Also included is an appeals process, which provides due process for individuals who disagree with an administrative citation or who desire to contest revocation of an issued permit.

ENVIRONMENTAL IMPACT:

In accordance with the requirements of CEQA, the project is exempt pursuant to Section 15378 and Section 15061(b)(3) of the California Environmental Quality Act.

FISCAL IMPACT

At this time, there is no identifiable fiscal impact associated with staff's recommendations. Any costs associated with administering or enforcing the City's new sidewalk vending program would be absorbed by existing resources for the City's business licensing and code compliance programs.

SUGGESTED ACTION

Approve Recommendation.

ATTACHMENTS

A. Ordinance No. 2023-611