23-726 **Agenda Date: 7/18/2023**

REPORT TO COUNCIL

SUBJECT
Action to Approve Introduction of an Ordinance Amending the Santa Clara City Code to Create a Limited-Term Pilot Project Regulating Vending Upon Certain Public Sidewalks and Pedestrian Paths Surrounding Levi's Stadium on Event Days Including the Waiver of Certain Business and Permit Fees

COUNCIL PILLAR
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EXECUTIVE SUMMARY
SB 946 prohibits California cities and counties from banning sidewalk vendors from operating on public sidewalks or other pedestrian pathways and prohibits cities from regulating sidewalk vendors unless cities establish a permitting system that is consistent with the provisions of SB 946. SB 946 also requires that any restrictions placed on sidewalk vendors be directly related to objective health, safety or welfare concerns. Local jurisdictions that wish to regulate sidewalk vending are required to first adopt a program with regulations consistent with SB 946. In accordance with Council direction at the April 18, 2023 meeting, staff presents a limited term pilot program ordinance regulating sidewalk vending on certain enumerated streets surrounding Levi's Stadium on event days.

BACKGROUND
During the past event season, the Police Department experienced a drastic increase in the number of unpermitted food and merchandise vendors within the immediate footprint of large-scale stadium events. This increase has caused several health and safety concerns which are outlined in this report.

As currently written, the City Code and regulations do not align with recently adopted State legislation related to sidewalk vending. Consequently, the City's ability to address these health and safety concerns is limited.

Council requested additional information on this topic, including policy options to amend regulations related to street vending. On April 18, 2023 the Police Department brought forth Report to Council #23-211 (Attachment 1) that detailed the current regulatory environment including the two pieces of recently adopted legislation that shape the options to regulate street vending on sidewalks as well as in the public right-of-way (SB 946 and SB 972, Attachments 2 and 3 respectively) as well as policy options for Council consideration to better position the City to address the concerns.

At this meeting, the Council voted unanimously to approve staff recommendation #1 to prepare a temporary ordinance amendment and permit process for stadium event days that would define areas

where sidewalk vending could not occur (the pilot program footprint) due to health and/or safety concerns.

DISCUSSION

As a result of the requirements under SB 946, the existing City Code provisions related to peddlers and solicitors were largely unenforceable as to such activity occurring on sidewalks and pedestrian paths. This was explained in detail in the City Attorney's Memorandum dated January 11, 2019 (included within Attachment 1). Under the proposed pilot program, certain enforcement mechanisms will again become available within the pilot program footprint, but enforcement options outside the pilot program footprint will remain severely limited.

In order to make the pilot program enforceable, to be in compliance with SB 946, and to encourage vendor participation in the program, staff is recommending amendments to two chapters of the Santa Clara City Code, as well as modifications to the permitting process and associated business/permit fees. Each of these amendments and operational adjustments are intended for the pilot period within the stadium operating areas only and will establish new time, place, and manner restrictions within the pilot project footprint that are directly related to objective health, safety and welfare concerns.

Direction from City Council on April 18, 2023, requests staff "prepare a temporary ordinance amendment and permit process for stadium event days that would **define areas where sidewalk vending should *not occur*** due to health and/or safety concerns, within a to-be-determined stadium footprint. The Ordinance would also contain provisions to prohibit vending in parking lots associated with the stadium event. The temporary Ordinance would be established for **a pilot period of September 2023 to January 2024** to evaluate impacts. At that time, staff would return to the City Council with recommendations for implementation for the 2024 concert and NFL seasons, as well as how the Ordinance may need to be amended to apply in other areas of the City such as City parks."

Based on previous Council direction, the intent of this report is to recommend the following:

- Amendments to various sections of the Santa Clara City Code (enforcement will remain paused in all other areas of the City in the manner in which it was recommended by the City Attorney's Office in 2019)
- A stadium footprint for Ordinance implementation
- Potential partnerships with stakeholders
- A preliminary enforcement plan
- Factors for Council consideration regarding future City-wide ordinance amendments

In addition, this report will discuss the following issues:

- A plan to modify the existing permitting process and update the required forms for

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dissemination online

- The Police Department's communication plan to vendors ahead of implementation and at events during the pilot period
- Partnership with other enforcement agencies such as County of Santa Clara Consumer Protection Division and California Alcoholic Beverage Control (ABC)

Proposed Amendments to Chapter 5.05 and Section 9.05.165 of the City Code

Staff has prepared the proposed Ordinance amendments that regulate both stationary and roaming sidewalk vendors, including revisions of time, place, and manner provisions to the extent allowed by SB 946:

- Modify Chapter 9.05.165 (prohibited activities in parking facilities adjacent to the Stadium): subsection (m) is amended to indicate that the prohibition on peddling on the perimeter sidewalk of the stadium is subject to the terms and requirements of the pilot program
- Amend Chapter 5.05 (solicitors and peddlers) to add a new Article IV governing the pilot program, which includes the following:
    - Prohibition of sidewalk vending activity on specified segments of sidewalks/paths (the pilot program footprint) surrounding the Stadium for particular time periods on event days
    - Outside of the restricted hours, vending activity within the pilot program footprint shall be allowed, subject to certain regulatory requirements, such as:
        - Obtaining a permit from the City
        - Proof of health permits and food handler training for sale of food or beverage
        - Sale of alcoholic beverages is prohibited
        - Vendors shall not operate in such a manner as to impair disability access
        - New administrative penalties structure

Recommended Pilot Project Footprint

With due consideration given to the Stadium Traffic Management Operations Plan (TMOP), taken together with the Police Department's experience with vehicle traffic patterns at the Stadium, as well as event attendee tendencies to use light rail (Valley Transportation Authority/VTA, heavy rail (Caltrain), bicycle, pedicab, walk and/or other forms of transportation to Levi's Stadium, staff is recommending the following areas where sidewalk vending ***should not occur*** due to identified health and/or safety concerns:

- Tasman Drive (from Great America Parkway to Calle de Sol)
- Tasman Drive eastbound off-ramp to Star and Stripes Drive (often referred to as a slip-ramp)
- Tasman Drive stairways to Stars and Stripes Drive

- Great America Parkway (from Bunker Hill Drive to Patrick Henry Drive)
- Stars and Stripes Drive (from the Tasman Drive eastbound off-ramp to Bill Walsh Way).
- San Tomas Aquino Creek Trail (from Great America Parkway to Agnew Road)
- Old Glory Lane east of Great America Parkway

The attached map (Attachment 4) details the recommended pilot program footprint.

In turn, the following areas have been identified as viable spaces for sidewalk vendors to conduct business on event days, subject to the regulatory requirements outlined in Chapter 5.05 of the City Code (with a modified permitting process in accordance with SB 946):

- Tasman Drive west of Great America Parkway and east of Calle de Sol
- Great America Parkway north of Bunker Hill Lane and south of Patrick Henry Drive
- Old Glory Lane west of Great America Parkway
- Old Ironsides Drive

See the section titled *Community Stakeholder/Partnerships* for added details about a coordinated approach to vendor communication and conflict, rules and regulations, booth/stall assignment and manage risks within these dedicated areas.

Health, Safety and Welfare Concerns

Based upon the Police Department's experience with vending occurring around the Stadium on event days, the Department has determined that the restrictions set forth above are necessitated by the following health, safety and welfare concerns:

- Creating traffic congestion by customer queues extending into driving lanes, as well as disrupting bicycle and pedicab traffic
- Vending carts and customer queues restrict the ability of other pedestrians and disabled persons to pass on the sidewalk
- Inadequate waste disposal, causing potential pollution as well as increased tripping/slipping dangers in the context of a large, highly dense, pedestrian group
- Location of sidewalk vending carts and the associated queues are not incorporated into the traffic management and operations plan
- Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group
- Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices
- Intoxicated attendees causing fights connected with massive groups traveling through narrow pathways

- Merchandise sales of unsafe or inappropriate items (e.g., flares) that are particularly dangerous in the context of a large, highly dense, pedestrian group
- Alcohol being sold to Stadium patrons without Alcoholic Beverage Control permits, particularly in situations in which Stadium halts alcohol sales prior to the conclusion of the event for safety purposes
- Unsafe food preparation, storage, and handling practices, including lack of hand washing facilities

City-wide there are also concerns about labor / employment law violations and vulnerable populations being subject to street crimes. These concerns have and will continue to be raised with partner agencies (e.g., County of Santa Clara Consumer Protection Division) concurrent with the implementation of the pilot program if approved.

According to the proposed Ordinance, sidewalk vendors would not be permitted in the pilot project footprint from the time Tasman Drive is closed to the public (generally 1:30 a.m. on event day) through 2-hours following the conclusion of the event to be consistent with other event-specific needs or one full calendar day whichever is less.

Modified Permitting Process and Proposed City Fee and Business Tax Waivers

The Police Department has several responsibilities related to the oversight of businesses regulated by City, State and Federal laws such as inspections, permits, annual renewals, investigating complaints against the businesses to ensure full compliance with the appropriate laws and regulations. As it relates to activity on Levi's Stadium event days the regulated businesses include taxicab drivers, pedicabs, solicitors and peddlers, mobile food trucks, etc.

Each regulated business type has different requirements. Currently, a solicitor/peddler permit encompasses mobile food trucks, ice cream trucks, push carts, solicitors, peddlers, etc. Due to SB 946's carve-out of non-motorized sidewalk vending from other types of peddler businesses, a new application will need to be drafted to take into consideration the guidelines set forth by the legislature including limitations on the personal information that may be collected. Compliance with generally applicable state laws is still required, as is compliance with the requirements of other applicable state and local agencies (such as the County Health Department).

In addition, under SB 946 basic City fees can still be required. The Adopted 2023/24 Municipal Fee Schedule rates for such fees applicable to sidewalk vendors are as follows:

Description of Fee, Rate or Charge	Adopted 2023/24 Fee
Fingerprinting LiveScan rolling service fee (one-time)	$66
City of Santa Clara Business License Tax	$45 per employee
Solicitor/Peddler company application	$349, plus LiveScan fees
Solicitor/Peddler employee application	$149, inclusive of LiveScan fee
Solicitor/Peddler company or employee renewal	$149

Based on the FY 23/24 fees, and how such requirements have been applied in the past, the following examples are intended to illustrate the potential costs:

Initial Process	**Sole Proprietor**	**Company with Employee(s)**
Permit Application	$349	$349 for the company, plus $149 per employee
LiveScan fingerprinting	$66	$66 for the owner
Business License Tax	$45	$45 for the owner, plus $45 per employee
TOTAL	**$460**	**$460, plus $194 per employee**
Renewal Process	**Sole Proprietor**	**Company with Employee(s)**
Application Renewal	$149	$149 for the company, plus $149 per employee
Business License Tax	$45	$45 for the owner, plus $45 per employee
TOTAL	**$194**	**$194, plus $194 per employee**

**The above charges do not include any third-party fees or costs (e.g., insurance, Health Department permit etc.) that are required to obtain a City of Santa Clara Solicitor/Peddler permit*

For the purposes of the pilot program, staff recommends requiring all vendors that desire to operate at Stadium events to obtain applicable licenses and permits, including LiveScan background checks. However, in order to encourage regulatory compliance, staff also recommends taking the step of waiving all City solicitor/peddler fees and taxes for such vendors during the pilot program period operating solely within the pilot program footprint.

To make the City general fund whole, Stadium Authority Staff plans to allocate $30,000 of Stadium Authority funds support this initiative. If approved, the City will waive certain solicitor/peddler fees and taxes on a first come first service basis until the $30,000 has been expended. Vendors would still be responsible for any third-party fees or costs (e.g., insurance, Health Department permit etc.) that are required to obtain a City of Santa Clara Solicitor/Peddler permit; it is not the intent of this proposal to waive or subsidize any third-party fees or costs. Vendors wishing to operate on City-wide sidewalk locations outside the pilot program footprint will still be required to pay all permitting fees and charges.

Program Implementation

A number of actions will be required in order to implement the pilot program. Key program elements include (1) a communications plan, (2) an internal enforcement plan, (3) coordination with other enforcement agencies, (4) exploration of community partnerships, and (5) information gathering and reporting. Each of these key elements are described in more detail, below.

1. Communications Plan

Following Council action, the staff will disseminate information regarding the pending changes on the following existing resources:

- City and Police Department website
- Police Department social media platforms (e.g., Facebook, GovDelivery, Instagram, Nextdoor,

Twitter)

- Written notice to existing sidewalk vendors with valid permits

In the early phase of program implementation, staff will also create and distribute flyers in multiple languages to educate and engage sidewalk vendors on program requirements.

Similarly, staff will coordinate with Levi's Stadium to create and post signage in multiple languages to be posted onsite according to the approved pilot program footprint.

2. Enforcement Plan

Levi's Stadium has a Code of Conduct and an extensive security plan with an escalating scale of enforcement (e.g., guest services, private security, law enforcement) for Code of Conduct violations to ensure all guests enjoy a positive event day experience. Private security, the Santa Clara Police Department and its local, State and Federal law enforcement personnel assist with implementation of this layered security plan.

While the Police Department will be responsible for enforcement of violations of the amended Code sections, staff anticipates the sidewalk vendor management program will help mitigate many of the anticipated challenges. A progressive enforcement model will be employed, including a community-oriented approach to the initial guidelines, education and violation admonishments, followed by enforcement for non-compliance or recurring violations.

For vending violations within Stadium parking lots, the existing Levi's Stadium Code of Conduct and associated Code sections within Chapter 9, are currently enforceable.

Staff recommends a similar progressive approach to conducting enforcement under this pilot project in the parking lots. In this case, it is recommended the approach be as follows:

- Private security (Levi's Stadium) for violations on Stadium property or Stadium parking lots
- Non-sworn personnel/Code Enforcement)
- Law Enforcement (sworn peace officer personnel)

This approach is also designed with an emphasis on initial education and violation admonishments, followed by progressive enforcement for non-compliance or recurring violations. The approach is intended to efficiently utilize staffing resources, as well as mitigate potential tension that may arise from enforcement contacts with vendors. Instead, private security and non-sworn personnel will explain the City Code, and issue warnings for violations with an opportunity to correct the violation by relocating to an area outside of the prohibited locations. Continued non-compliance could result in an administrative citation being issued.

Doing so will increase expenses, at least in the short term, associated with creating a "team" to educate sidewalk vendors on the regulations and handle enforcement. The Santa Clara Stadium Taxpayer Protection and Economic Progress Act, commonly referred to as Measure J, requires all costs related to stadium operations to be reimbursed to the City. Sidewalk vending enforcement costs in the pilot program area would be subject to repayment under Measure J.

The new statute was expressly designed by the State Legislature to decriminalize sidewalk vending.

A violation of the pilot program ordinance is punishable only by a prescribed administrative fine penalty structure or permit revocation. Additionally, the new law requires local jurisdictions to offer an ability-to-pay determination to individuals who are issued a violation. The administrative fines for violation of the pilot program (such as vending in a prohibited area) are as follows:

- one hundred dollars ($100) for a first violation
- two hundred dollars ($200) for a second violation within one year of the first violation
- five hundred dollars ($500) for each additional violation within one year of the first violation
- a local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

The violation of failing to obtain a permit is punishable by stricter penalties as follows:

- two hundred fifty dollars ($250) for a first violation
- five hundred dollars ($500) for a second violation within one year of the first violation
- one thousand dollars ($1,000) for each additional violation within one year of the first violation

3. ***Partnership with County of Santa Clara Health Department and California Alcoholic Beverage Control (ABC)***

Staff feels that a key element to program success will be the engagement of other interested, law and safety enforcement agencies to assist with the effort. The two main agencies of interest are the ABC and the Santa Clara County Health Department.

ABC has enforcement authority for alcohol sales apart from SB 946. On occasion, ABC representatives will attend a stadium event to issue warnings and/or citations to anyone illegally selling alcohol or setting up a bar for alcohol sales.

Meanwhile, the Police Department will again reach out for collaboration with the County of Santa Clara for health permit and food safety enforcement. The County has much more substantial powers than the City and is not limited by SB 946. In recent years, however, County personnel resources have prevented their ability to have a presence at every Levi's Stadium event.

Community/Stakeholder Partnerships

Leading up to and during the pilot program period, staff will also explore other possible partnerships with interested stakeholders. ManCo and neighborhood interests are key of course, but efforts will also be directed at the vendors themselves.

Recent changes in State law have enhanced the entrepreneurial spirit associated with any sidewalk vendors. As a result, partnering with our business-persons utilizing stadium events as part of their business model will be important. One example of this would be to explore the creation of an umbrella or cooperative structure within each of the approved sidewalk vending areas to bring people together with a shared goal while combating health and safety concerns to mitigate risks (e.g., ADA compliance, food-related illnesses, vendor relationships, injuries to people, damage to property, employment and labor law risks, etc.). This community-oriented approach, similar to how some farmer's markets are operated, would bring together individuals who want to efficiently sell their

products and be part of the decision-making process in doing so. This umbrella organization could also serve as the point of contact for adjacent properties and brick and mortar businesses.

Establishment of such an entity and its charter members will take some time. As a result, staff is recommending the sidewalk vendor management be implemented as Phase 2 of this overall process.

Information Gathering and Reporting

Throughout the program, staff will be observing and gathering relevant information in order to assist staff and the Council to evaluate program successes, failures, and possible improvements. Types of information to be gathered and reported out at the end of the process shall include, at a minimum, the following:

- Number of vending permits issued and fee waivers issued
- Number of vending permits denied or revoked
- Number of written warnings and citations issued as well as the administrative fines collected
- Expenses to implement the permit program and conduct enforcement of the regulations
- Proposed changes to the pilot project footprint, City Code, and other regulations as a result of the pilot program experiences
- Discussion of potential costs associated with a longer-term program

Next Steps
Pending Council approval of the staff recommendation, a second reading of the Ordinance will take place at the August 22, 2023 Council meeting. If the ordinance is adopted on August 22, 2023, it will become effective with initial enforcement efforts commencing upon the effectiveness of the ordinance 30 days thereafter. Doing so, allows for communications and permitting compliance efforts during the pre-season NFL games with the program going “live” as early in the regular season as possible.

The pilot program will continue through January 2024. Staff intends to report to the Council on the progress of the program, and to provide a full report at the conclusion of the program (estimated Spring 2024). At that time, staff may offer further Ordinance amendments to modify or extend the program with respect to Stadium events, and/or to expand the program into other areas of the City, including but not limited to, City parks.

ENVIRONMENTAL REVIEW
The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT
There will be Police Department and Community Development staff time associated with implementing and enforcing new permit requirements for sidewalk vendors, establishing a sidewalk vendor management program and developing a communication plan to vendors ahead of implementation and at events during the pilot period. The most significant impact from a staffing perspective will be conducting enforcement on Levi’s Stadium event days. At this time, there are approximately 8 major events scheduled at Levi’s Stadium during the pilot program; additional event (s) may be added through January 2024.

The staff recommendation includes requesting up to $30,000 in Stadium Authority funds to support the permitting initiative. This should make the City general fund whole with respect to any waived fee or tax amounts. This funding proposal will be administered by the Stadium Authority Executive Director out of existing Stadium Authority funds. If a Stadium Authority appropriation is required, a budget amendment will brought back to the Stadium Authority for its consideration and approval at the next scheduled Stadium Authority meeting.

The Stadium Manager has advised that Stadium will enforce vending regulations on Stadium grounds and parking lots. As such the Stadium Manager will be handling signage, and the corresponding costs on Stadium grounds and parking lot and will produce signs for public right-of-way (ROW) as appropriate.

COORDINATION

This report was coordinated with the Community Development Department, Parks and Recreation Department, Police Department, City Attorney's Office, and City Manager's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <mailto:clerk@santaclaraca.gov> or at the public information desk at any City of Santa Clara public library.

Concurrent with the adoption this Ordinance, Stadium Manager plans to implement a companion program on Stadium grounds and in stadium parking lots. City staff and Stadium Manager will coordinate efforts to communicate with vendors about the implementation of the new stadium rules and the boundaries of the pilot program on City ROW.

RECOMMENDATION

1. Waive first reading and approve introduction of an ordinance amending Chapter 5.05 (Solicitors and Peddlers) and Section 9.05.165 (Activities and Conduct Prohibited in Parking Facilities Adjacent to the Stadium or Parking Facilities Used for Stadium Events) of the Santa Clara City Code to Create a Limited-Term Pilot Project Regulating Vending Upon Certain Public Sidewalks and Pedestrian Paths Surrounding Levi's Stadium on Event Days Pursuant to SB 946; and,
2. Waive fees and taxes for all required City business licenses and permits, for qualified sidewalk vendors operating at stadium events during the pilot program period (September 21, 2023 through January 31, 2024) on a first come first serve basis in an amount not to exceed $30,000; and authorize the City Manager to develop administrative guidelines to implement the fee waiver program.

Reviewed by: Pat Nikolai, Chief of Police
Approved by: Jōvan D. Grogan, City Manager

ATTACHMENTS

1. Report to Council 23-211 from the April 18, 2023 City Council meeting, with attachments

2. Senate Bill 946
3. Senate Bill 972
4. Proposed Ordinance
5. Pilot Program Map

STATE OF CALIFORNIA
AUTHENTICATED
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Senate Bill No. 946

CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk

vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.

(2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.

(3) Sidewalk vending contributes to a safe and dynamic public space.

(4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.

(5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

(6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

SEC. 2. Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

Chapter 6.2. Sidewalk Vendors

51036. For purposes of this chapter, the following definitions apply:

(a) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

(b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(c) "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.

(d) "Local authority" means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

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

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(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) 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.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority,

unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the 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, any of the following:

(1) 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 on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.

(4) Requiring the 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 licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the sidewalk vendor.

(B) A description of the merchandise offered for sale or exchange.

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.

(E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

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

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the

Food and Agricultural Code and any regulations adopted pursuant to that chapter. A "swap meet" means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(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 vendors 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, an encroachment permit, special event permit, or temporary event permit, for purposes 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.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

51039. (a) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038 is punishable only by the following:

(A) An administrative fine not exceeding one hundred dollars ($100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars ($200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars ($500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

(i) An administrative fine not exceeding two hundred fifty dollars ($250) for a first violation.

(ii) An administrative fine not exceeding five hundred dollars ($500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars ($1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) 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.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.

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STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 972

CHAPTER 489

An act to amend Sections 113818, 113831, and 113868 of, and to add Chapter 11.7 (commencing with Section 114368) to Part 7 of Division 104 of, the Health and Safety Code, relating to retail food.

[Approved by Governor September 23, 2022. Filed with Secretary of State September 23, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 972, Gonzalez. California Retail Food Code.

(1) Existing law, the California Retail Food Code (the code), establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities and requires local health agencies to enforce these provisions. Existing law, for purposes of the code, defines a "cottage food operation" as an enterprise that has no more than a specified amount in gross annual sales, is operated by a cottage food operator, and has no more than 1 full-time employee within the registered or permitted area of a private home where the food products are prepared and packaged. Existing law provides for the regulation of microenterprise home kitchen operations and limits those operations to not serving more than 30 individual meals per day and not more than 60 individual meals per week and to no more than $50,000 in verifiable gross annual sales, as adjusted for inflation. Existing law authorizes the local enforcement agency to decrease the limit on the number of individual meals prepared based on the food preparation capacity of the operation.

This bill would authorize a cottage food operation or microenterprise home kitchen operation to serve as a commissary or mobile support unit for up to 2 compact mobile food operations if the cottage food operation or microenterprise home kitchen operation permit includes an endorsement from the local enforcement agency that the cottage food operation or microenterprise home kitchen operation is capable of supporting the preparation and storage of the food being sold from the compact mobile food operation and the storage and cleaning of the compact mobile food operation. The bill would authorize nonpotentially hazardous foods prepared in a cottage food operation to be served from a compact mobile food operation. The bill would define "compact mobile food operation" as a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance. The bill would require compact food operations to conduct only limited food preparation.

(2) The code defines "limited food preparation" as food preparation that is restricted to specified activities, including dispensing or portioning of

nonpotentially hazardous food, slicing and chopping of food on a heated cooking surface during the cooking process, and holding, portioning, and dispensing foods that are prepared at a satellite food service or catering operation.

This bill would include in the definition of "limited food preparation" dispensing and portioning for immediate service to a customer of food that has been temperature controlled until immediately prior to portioning or dispensing, slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility, hot and cold holding of food previously prepared at an approved permanent food facility, and reheating of food that has been previously prepared at an approved permanent food facility and held at the approved temperatures.

(3) The code defines "mobile food facility" and regulates what types of food may be provided at a mobile food facility. The code requires mobile food facilities to meet specified health and safety standards, including access to warewashing sinks, restrooms, and handwashing facilities and required quantities of potable water.

This bill would require a compact mobile food operation to meet the applicable requirements of mobile food facilities, except as specified. The bill would exempt a compact mobile food operation that has 25 square feet or less of display area and sells only prepackaged, nonpotentially hazardous foods or whole uncooked produce from the code, except as specified. The bill would authorize a compact mobile food operation to display or sell food outdoors, if certain conditions are met, including, among other things, overhead protection provided above all food display areas. The bill would require a compact mobile food operation that engages in the preparation of raw meat, raw poultry, or raw fish to meet additional specified requirements. The bill would authorize the enforcement agency to preapprove a standard plan for a standardized or mass-produced facility intended to serve as a compact mobile food operation and would authorize a compact mobile food operation to use that standardized or mass-produced facility after a final inspection, but without submitting plans for the individual unit. The bill would authorize the enforcement agency to collect a fee for the final inspection.

(4) Existing law requires commissaries and other approved facilities servicing mobile support units, mobile food facilities, and vending machines to meet specified standards.

This bill would authorize an enforcement agency to approve a facility with nonconforming structural conditions if those conditions do not pose a public health hazard. The bill would also require an enforcement agency to approve the storage of a compact mobile food facility in a permitted permanent food facility if, after initial inspection, the agency determines that the compact mobile food facility is protected from contamination. The bill would authorize the enforcement agency to charge a fee to administer these provisions.

(5) The code requires a food facility to have a valid permit to be open for business and authorizes the local enforcement agency to charge a fee for the permit or registration or related services.

This bill would authorize the local enforcement agency to reduce the fee for the permit, registration, or related service for an applicant seeking approval of a compact mobile food operation or related operations.

(6) Under existing law, violation of the code is a misdemeanor, unless otherwise specified.

This bill would make violations of the code by an operator or employee of a compact mobile food facility or a sidewalk vendor punishable only by an administrative fine. Additionally, by making changes to the definition of various crimes and by adding new crimes under the code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 113818 of the Health and Safety Code is amended to read:

113818. (a) "Limited food preparation" means food preparation that is restricted to one or more of the following:

(1) Heating, frying, baking, roasting, popping, shaving of ice, blending, steaming or boiling of hot dogs, or assembly of nonprepackaged food.

(2) Dispensing and portioning of nonpotentially hazardous food or dispensing and portioning for immediate service to a customer of food that has been temperature controlled until immediately prior to portioning or dispensing.

(3) Holding, portioning, and dispensing of any foods that are prepared for satellite food service by the onsite permanent food facility or prepackaged by another approved source.

(4) Holding, portioning, and dispensing of any foods that are prepared by a catering operation.

(5) Slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility or slicing and chopping of food on a heated cooking surface during the cooking process.

(6) Cooking and seasoning to order.

(7) Juicing or preparing beverages that are for immediate service, in response to an individual consumer order, that do not contain frozen milk products.

(8) Hot and cold holding of food that has been prepared at an approved permanent food facility.

(9) Reheating of food that has been previously prepared at an approved permanent food facility and held at temperatures required by this chapter.

(b) "Limited food preparation" does not include any of the following:

(1) Slicing and chopping potentially hazardous food, other than produce, unless it is on the heated cooking surface.

(2) Thawing.

(3) Cooling of cooked, potentially hazardous food.

(4) Grinding raw ingredients or potentially hazardous food.

(5) Washing of foods.

(6) Cooking of potentially hazardous foods for later use.

(7) Handling, manufacturing, freezing, processing, or packaging of milk, milk products, or products resembling milk products subject to licensing under Division 15 (commencing with Section 32501) of the Food and Agricultural Code.

SEC. 2. Section 113831 of the Health and Safety Code is amended to read:

113831. (a) "Mobile food facility" means any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. "Mobile food facility" does not include a "transporter" used to transport packaged food from a food facility, or other approved source to the consumer.

(b) "Single operating site mobile food facilities" means at least one, but not more than four, unenclosed mobile food facilities, and their auxiliary units, that operate adjacent to each other at a single location.

(c) "Compact mobile food operation" means a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

SEC. 3. Section 113868 of the Health and Safety Code is amended to read:

113868. "Portable" means equipment that is capable of being lifted and moved or has utility connections that are designed to be disconnected or of sufficient length to permit the unit to be moved for cleaning, and does not exceed 100 pounds (46 kg) in weight or is otherwise designed to be mobile.

SEC. 4. Chapter 11.7 (commencing with Section 114368) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

Chapter 11.7. Compact Mobile Food Operation

114368. A compact mobile food operation, as defined in subdivision (c) of Section 113831, shall meet the applicable requirements of Chapter 10 (commencing with Section 114294), except as provided in this chapter.

114368.1. (a) Any compact mobile food operation with 25 square feet or less of display area from which only prepackaged nonpotentially hazardous food and whole uncooked produce is sold is exempt from the requirements of this part, except that the facility shall comply with all of the following:

(1) Sections 113980, 114047, 114049, 114390, 114393, 114397, and 114399.

(2) Chapter 1 (commencing with Section 113700).

(3) Chapter 2 (commencing with Section 113728).

(b) (1) A local enforcement agency may inspect a compact mobile food operation that is exempt, as specified in subdivision (a), during the facility's hours of operation and other reasonable times on the basis of a consumer complaint or just cause.

(2) For the purposes of determining compliance with this chapter, a compact mobile food operation that is not exempt as specified in subdivision (a) is subject to permitting and routine inspections or inspections on the basis of a consumer complaint or just cause.

(c) The local enforcement agency may recover the costs of investigation and enforcement of this section, subject to any limitations in this part on fines issuable to compact mobile food operations.

114368.2. (a) Compact mobile food operations shall conduct only limited food preparation, as defined in Section 113818. Notwithstanding any other provision of this part, a compact mobile food operation, as defined in subdivision (c) of Section 113831, may display or sell food outdoors, if all of the following conditions are satisfied:

(1) Overhead protection are provided above all food display areas.

(2) Food items from the outdoor display are stored consistent with this chapter at all times other than during business hours.

(3) Outdoor displays comply with Section 113980 and have been approved by the enforcement agency if the compact mobile food operation is required to obtain a permit.

(b) A compact mobile food operation shall not sell food other than nonpotentially hazardous prepackaged food or whole produce, or conduct any food preparation, unless it meets the applicable operational requirements of this chapter, including applicable requirements for integral equipment, handwashing, and restroom access.

(c) Equipment that is required to be integral to a compact mobile food operation shall either be permanently attached to the primary unit or securely fastened to the primary unit by means that would prevent unintentional removal. Equipment may be considered integral despite being portable or otherwise removable for cleaning, maintenance, or as part of its regular function.

(d) A compact mobile food operation operating from an individual shall not conduct any food preparation or sell foods other than nonpotentially hazardous prepackaged food or whole produce.

114368.3 (a) (1) A permitted cottage food operation or microenterprise home kitchen operation may serve as a commissary or mobile support unit for up to two compact mobile food operations if the cottage food operation or microenterprise home kitchen operation permit includes an endorsement from the local enforcement agency that the cottage food operation or microenterprise home kitchen operation is capable of supporting the preparation and storage of the food being sold from the compact mobile

food operation and the storage and cleaning of the compact mobile food operation.

(2) Transactions at a compact mobile food operation operated by a cottage food operator shall constitute "direct sales" for the purposes of paragraph (4) of subdivision (b) of Section 113758.

(3) Transactions at up to two compact mobile food operations operated by a cottage food operator shall not count toward the annual gross sales restrictions in Section 113758 applicable to cottage food operations if the governing body has authorized this action.

(4) Nonpotentially hazardous foods prepared in a cottage food operation may be served from a compact mobile food operation.

(5) Food prepared in a microenterprise home kitchen operation may be served from a compact mobile food operation operated by the microenterprise home kitchen operation permitholder.

(6) The meal and gross annual sales limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 do not apply to the sale of nonpotentially hazardous food or produce for up to two compact mobile food operations operated by the microenterprise home kitchen operation if the governing body has authorized this action.

(7) With the authorization of the governing body and if the enforcement agency determines that the operation does not pose a public health hazard, a permitted microenterprise home kitchen operation may serve as a commissary for up to two compact mobile food operations. The meal and gross annual sales limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 apply unless the governing body sets a higher meal and income limitation.

(8) The governing body of a local jurisdiction that permits microenterprise home kitchen operations pursuant to Section 114367, may set the meal and income limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 at a higher level than provided in those paragraphs for microenterprise home kitchen operations that operate in conjunction with a compact mobile food operation. Notwithstanding this subdivision, the levels in effect, by statute or ordinance, as of January 1, 2023, shall remain in effect until changed by the local jurisdiction.

(b) (1) Existing permanent food facilities may be permitted to support the operations and storage of compact mobile food operations pursuant to the requirements of this section.

(2) Notwithstanding any other provision of this part, upon an evaluation verifying that a permanent food facility satisfies subdivisions (a) to (f), inclusive, of Section 114326, an enforcement agency shall approve the use of a permitted permanent food facility to satisfy the requirements of Section 114295 for a compact mobile food operation.

(3) Notwithstanding any other provision of this part, upon an evaluation verifying that the compact mobile food operation will be stored in a manner that protects the compact mobile food operation from contamination, an enforcement agency shall approve the storage of a compact mobile food operation in a permitted permanent food facility.

(4) Except when a determination is made by the enforcement agency that any nonconforming structural conditions pose a public health hazard, the enforcement agency may approve a facility to support operations of a compact mobile food operation.

(5) Plan submission shall not be required for an existing permanent food facility to support the operations of a compact mobile food operation when a determination is made by the local enforcement agency that the current operation and structural facilities of the permanent food facility can successfully provide the necessary functions of a commissary for a compact mobile food operation.

(6) An approved permanent food facility that will be used for cooling of food for a compact mobile food operation shall be approved by the enforcement agency for cooling.

(c) (1) Unless prohibited by local ordinance, an enforcement agency may allow the use of a private home for the storage of a compact mobile food operation if it determines, after an evaluation, that storage in the private home would not pose a public health hazard and that the compact mobile food operation will be stored in a manner that protects the compact mobile food operation from contamination.

(2) No more than two compact mobile food operations may be stored in a private home unless the enforcement agency finds that storage of more than two compact mobile food operations in a private home would not pose a public health hazard.

(3) The storage area within the home shall be designated and clearly identified upon approval and shall not be relocated without the review and approval of the local enforcement agency.

(4) Prepackaged nonpotentially hazardous food, whole fruits, and whole vegetables may be stored in the home prior to sale or preparation of that food in a compact mobile food operation.

(5) Food prepared in a private home shall not be used or offered for sale on a compact mobile food operation, unless it is a permitted cottage food operation or microenterprise home kitchen operation pursuant to subdivision (a). Violation of this paragraph may result in suspension or revocation of the permit to operate the compact mobile food operation.

(6) For purposes of determining compliance with this subdivision, a local enforcement agency may access, for inspection purposes, a private home where a compact mobile food operation is stored only if the representative has, on the basis of a consumer complaint, reason to suspect that the home is being used for food preparation, food storage, or unauthorized storage of utensils or other food facility equipment in violation of this subdivision.

(d) At the end of the operating day, potentially hazardous food that is prepared on or served from a compact mobile food operation shall be destroyed in a manner approved by the enforcement agency.

(e) For the purposes of this chapter, an endorsement by the local enforcement agency shall be a documented and recorded approval of compliance with applicable sections. An endorsement may include an inspection or evaluation, but shall not require a registration or permit.

(f) The enforcement agency may collect a fee for any permit, endorsement, inspection, or evaluation issued or conducted pursuant to this chapter in an amount that does not exceed the reasonable administrative costs of the enforcement agency.

114368.4. (a) Except as provided in subdivision (b), a compact mobile food operation that is approved for limited food preparation that prepares raw meat, raw poultry, or raw fish is subject to warewashing and handwashing facility requirements as outlined in Chapter 10 (commencing with Section 114294).

(b) (1) A compact mobile food operation may satisfy the requirements of Sections 114313 and 114314 by demonstrating access to a permitted auxiliary conveyance containing the necessary handwashing and warewashing sinks when operating at a site-specific location. The auxiliary conveyance may be operated by the same or a different permitholder. An enforcement agency may permit an auxiliary conveyance to serve multiple compact mobile food operations operating in close proximity to the auxiliary conveyance, as determined by the enforcement agency.

(2) If an auxiliary conveyance is not operated by the permitholder of the compact mobile food operation, the operator of the auxiliary conveyance shall obtain a permit from the enforcement agency to operate the auxiliary conveyance and service compact mobile food operations.

(3) The permit application for an auxiliary conveyance not operated by a compact mobile food operation shall include a site plan and shall be submitted to the enforcement agency at least two weeks prior to the operation of any food facility in conjunction with the auxiliary conveyance.

(4) The site plan for an auxiliary conveyance not operated by a compact mobile food operator shall show the proposed location and storage of the auxiliary conveyance, the proposed locations of any food facilities that will utilize the auxiliary conveyance, restrooms, refuse containers, potable water supply faucets, waste water disposal facilities, and all shared warewashing and handwashing facilities.

(c) A compact mobile food operation that is approved for limited food preparation that does not prepare raw meat, raw poultry, or raw fish shall do one of the following:

(1) Provide a three-compartment sink as described in subdivision (a) of Section 114313.

(2) Provide at least one two-compartment sink that complies with subdivision (e) of Section 114099.3.

(3) Provide a one-compartment sink with at least one integral metal drainboard, an adequate supply of spare preparation and serving utensils to replace those that become soiled or contaminated, and warewashing facilities that comply with subdivision (a) of Section 114313 in reasonable proximity to, and readily accessible for use by, food employees at all times.

(4) Maintain an adequate supply of spare preparation and serving utensils on the compact mobile food operation to ensure that utensils used for potentially hazardous foods are replaced with clean and sanitized utensils every four hours or as needed to replace those that become soiled or

contaminated. A compact mobile food operation that complies with this paragraph is not required to provide a warewashing sink.

(d) A compact mobile food operation that is approved for limited food preparation that does not prepare raw meat, raw poultry, or raw fish shall provide an integral handwashing sink with at least five gallons of potable water to operate with a potable water tank with a capacity of at least five gallons for handwashing.

(e) An enforcement agency may permit a compact mobile food operation to operate with an integral water tank smaller than specified under subdivision (c) or (d) of Section 114217 if the enforcement agency finds that the compact mobile food operation is operating in an area and manner that would allow for replenishment of the water supply as needed during operations.

(f) A compact mobile food operation shall submit, to the enforcement agency, written operating procedures that include the process of filling potable water tanks if it will operate with a water tank with a capacity of less than five gallons specified in subdivisions (c) and (d) of Section 114217.

(g) A compact mobile food operation that does not prepare raw meat, raw poultry, or raw fish is exempt from any provision of this part requiring it be equipped with a water heater or otherwise be supplied with warm water.

114368.5. (a) Upon receipt of complete, easily readable plans drawn to scale, and specifications satisfactory to the enforcement agency, an enforcement agency may preapprove a standard plan for a standardized or mass-produced individual unit intended to serve as a compact mobile food operation.

(b) A person proposing to operate a compact mobile food operation who has acquired an individual unit for which the construction of the compact mobile food operation has been built to approved plans shall not be required to submit plans for the individual unit, but instead shall be subject to a final inspection of the compact mobile food operation to ensure that the individual unit and proposed method of operation conform to the standard plans preapproved pursuant to subdivision (a). The permit application for a compact mobile food operation utilizing a preapproved individual unit shall include a certification that the applicant has not substantially altered the individual units from the plans preapproved pursuant to subdivision (a). The enforcement agency may collect a fee in the final inspection in an amount that does not exceed the reasonable administrative costs to the enforcement agency.

(c) The repair of equipment or integral fixtures on a compact mobile food operation or the replacement of equipment and fixtures on a compact mobile food operation with substantially similar equipment or fixtures is not a remodel, and the repair or replacement of equipment or fixtures does not require the submission of plans to an enforcement agency.

(d) A local governing body may waive or reduce a fee for the permit, registration, or related services for an applicant seeking approval of a compact mobile food operation or related operations.

(e) All new and replacement food-related and utensil-related equipment for a compact mobile food operation shall be certified or classified for sanitation by an American National Standards Institute accredited certification program, or a certification program accredited by another accreditation body recognized by the enforcement agency as providing substantially similar food safety and operational standards. In the absence of an applicable certified sanitation standard, food-related and utensil-related equipment shall be evaluated for approval by the enforcement agency.

(f) All new and replacement electrical appliances for a compact mobile food operation shall meet applicable Underwriters Laboratories standards for electrical equipment as determined by an American National Standards Institute accredited certification program or a certification program accredited by another accreditation body recognized by the enforcement agency as providing substantially similar food safety and operational standards.

114368.6. A compact mobile food operation is exempt from Section 113947.1 if the operator and any individual who is involved in the preparation, storage, or service of food for the compact mobile food operation has obtained a food handler card that meets the requirements of Section 113948.

114368.7. A compact mobile food operation is exempt from the requirements of Section 114315 if the compact mobile food operation operates with multiple employees or operators and the compact mobile food operation may remain operable by a single individual so that employees or operators may alternate use of a restroom.

114368.8. (a) Notwithstanding subdivision (a) of Section 114395, a violation of this part by an operator or employee of a compact mobile food operation is punishable only by an administrative fine.

(b) A violation of any provision of this part or regulation adopted pursuant to this part by an operator or employee of a compact mobile food operation or a sidewalk vendor shall not be punishable as an infraction or misdemeanor, and an operator or employee of a compact mobile food operation or a sidewalk vendor alleged to have violated any of those provisions is not subject to arrest except when independent grounds for that arrest exist under law.

(c) Except as provided in paragraph (d), each offense by an operator or employee of a compact mobile food operation or a sidewalk vendor may only be punished by a fine consistent with the following:

(1) A notice of violation detailing the violation, including the applicable provision of this part or regulation adopted pursuant to this part.

(2) An administrative fine not exceeding one hundred dollars ($100) for a second violation within one year of the first violation.

(3) An administrative fine not exceeding two hundred dollars ($200) for a third violation within one year of the first violation.

(4) An administrative fine not exceeding five hundred dollars ($500) for each additional violation within one year of the first violation.

(d) If a compact mobile food operation is required to obtain a permit from the enforcement agency, operating without a permit may be punishable by a fine not to exceed three times the cost of the permit in lieu of the administrative fines referenced in subdivision (c). An enforcement agency shall not issue any fines in excess of the amounts allowable pursuant to subdivision (c) prior to January 1, 2024.

(e) (1) When assessing an administrative fine for a first-time offense, pursuant to this section, the hearing officer shall take into consideration the person's ability to pay the fine. The enforcement agency shall provide the person with notice of their right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632 of the Government Code, the enforcement agency shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this section.

(3) The enforcement agency may waive the administrative fine or may offer an alternative disposition.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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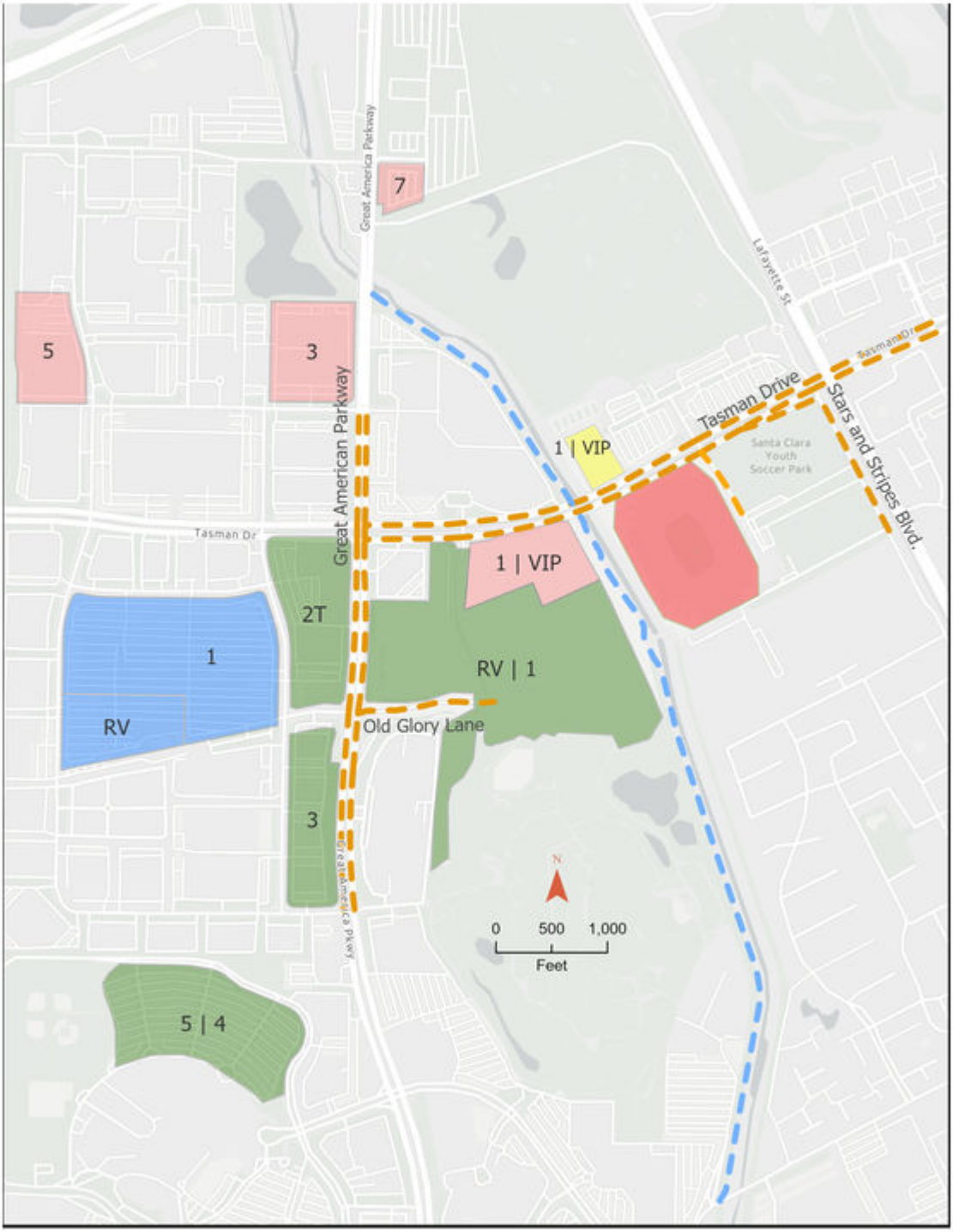
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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 5.05 (SOLICITORS AND PEDDLERS) AND SECTION 9.05.165 (ACTIVITIES AND CONDUCT PROHIBITED IN PARKING FACILITIES ADJACENT TO THE STADIUM OR PARKING FACILITIES USED FOR STADIUM EVENTS) OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA"

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, in 2018 the State legislature passed SB 946 which placed significant limitations on local agencies' ability to regulate sidewalk vending;

WHEREAS, among other things, SB 946 requires that any time, place, and manner restrictions placed on sidewalk vending to be supported by objective health, safety, and welfare concerns, and limits the types of personal information that can be collected in the permitting process, and limits the enforcement activity that a public agency can conduct;

WHEREAS, existing City Code provisions are not strictly in compliance with the mandates of SB 946 and, therefore, have been largely unenforceable;

WHEREAS, the City recognizes and appreciates that sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities;

WHEREAS, as the State legislature recognized, the City has an interest in regulating the flow of traffic and ensuring the safety of pedestrians;

WHEREAS, the City has observed and experienced a dramatic increase in sidewalk vending around Levi's Stadium on event days, which has created significant health and safety concerns primarily related to traffic and pedestrians; and

WHEREAS, the City Council deems it to be in the best interests of the City to create a

limited term pilot project regulating vending on specified sidewalks and public paths surrounding Levi's Stadium on event days.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Subsection (m) of Section 9.05.165 (entitled "Activities and conduct prohibited in parking facilities adjacent to the Stadium or parking facilities used for Stadium events") of Chapter 9.05 (entitled "In General") of Title 9 (entitled "Public Peace, Morals, and Welfare") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"(m) No person shall bring, or cause to be brought, for the purposes of sale or barter, or have for sale, or sell or exchange, or offer for sale or exchange any food, drink, service, goods, wares, ticket or merchandise, or solicit employment, business or contributions of money or other property, within any portion of the parking areas, including the perimeter sidewalk of the facility except as set forth in Article IV of Chapter 5.05."

SECTION 2: That a new Article IV (entitled "Stadium Pilot Project") is added to Chapter 5.05 (entitled "Solicitors and Peddlers") of Title 5 (entitled "Business Licenses and Regulations") of "The Code of the City of Santa Clara, California" to read as follows:

"**Article IV. Stadium Pilot Program**

5.05.400 Definitions
5.05.410 Purpose
5.05.420 Permit Required
5.05.430 Time, Place, or Manner Restrictions
5.05.440 Health, Safety, or Welfare Concerns
5.05.450 Enforcement

5.05.400 Definitions.

(a) "Event Days" means days on which events are held at the Stadium which

necessitate street closures pursuant to the Traffic Management and Operations Plan.

(b) “Sidewalk Vendor” means a person who sells food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

(c) “Stadium Pilot Program Area” means those specific streets or paths enumerated in SCCC 5.05.430.

5.05.410 Purpose.

The purpose of this Article is to strike a balance between supporting entrepreneurship and maintaining a safe environment for Stadium patrons by enacting a limited-term pilot program regulating the time, place, and manner in which Sidewalk Vendors may conduct business within the designated Stadium Pilot Program Area surrounding Levi’s Stadium on Event Days, based upon objective health, safety, and welfare concerns.

This Article shall become inoperative on January 31, 2024, and shall be considered repealed on that date, unless this Section is amended on or before January 31, 2024, to delete or extend this date.

5.05.420 Permit Required.

(a) At any time, whether on an Event Day or otherwise, Sidewalk Vendors operating within the Stadium Pilot Program Area must possess a valid sidewalk vending permit issued by the Chief of Police or designee.

(b) To obtain a sidewalk vending permit, Sidewalk Vendors must complete a permit application, which shall be on a form available at the Police Department, with the

following information:

(1) Categories of personal identification and business information to be enumerated by the Police Department on the application, and which shall be in accordance with Senate Bill 946

(2) Fingerprinting in accordance with SCCC 5.05.050

(3) Business Tax Certificate in accordance with SCCC 3.40.060

(4) Proof of current and valid permit, or other form of approval, from other applicable public agencies including, but not limited to, the Santa Clara County Department of Environmental Health

(5) If an individual or entity other than the applicant owns the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by the applicant, such individual or entity shall be identified in the manner prescribed by the Police Department

(6) If the applicant is employed or otherwise engaged by another individual or entity to perform Sidewalk Vendor services, such individual or entity shall be identified in the manner prescribed by the Police Department

(c) Permits shall be valid for a period of one year and Sidewalk Vendors must renew their permits annually.

(d) Fees associated with the initial permit application or annual renewal shall be established by resolution of the City Council and must be remitted at the time of submission of the application or request for renewal.

(e) An initial permit application may be denied under any of the following circumstances:

(1) The applicant failed to submit all required information or fees

(2) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application

(3) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(f) A request for permit renewal, which shall be on a form available at the Police Department, may be denied under any of the following circumstances:

(1) The applicant failed to submit all required information or fees

(2) The applicant failed to request renewal prior to expiration of the permit

(3) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application

(4) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(g) The decision of the Chief of Police or designee to deny, revoke, or not renew, a permit may be appealed under the procedures set forth in SCCC Sections 2.115.050 – 2.115.090.

(h) The permit issued pursuant to this Article, and all interests, rights and obligations pertaining thereto, are personal to the holder of such permit, and are not transferable or assignable, by operation of law or otherwise.

5.05.430 Time, Place, or Manner Restrictions

(a) No Sidewalk Vendor shall sell food or merchandise, whether stationary or

roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path, within the Stadium Pilot Program Area on Event Days during the hours of street or trail closures. In no event shall Street Vending occur within the Stadium Pilot Program Area on Event Days within two hours before the commencement of an event and two hours after the conclusion of an event.

(b) The Stadium Pilot Program Area shall be defined as the following:

(1) Tasman Drive (from Great America Parkway to Calle de Sol)

(2) Tasman Drive eastbound off-ramp to Star and Stripes Drive

(3) Tasman Drive stairways to Stars and Stripes Drive

(4) Great America Parkway (from Bunker Hill Drive to Patrick Henry Drive)

(5) Stars and Stripes Drive (from the Tasman Drive eastbound off-ramp to Bill Walsh Way)

(6) San Tomas Aquino Creek Trail (from Great America Parkway to Agnew Road)

(7) Old Glory Lane east of Great America Parkway

5.05.440 Health, Safety, or Welfare Concerns

(a) The following health, safety, or welfare concerns exist upon the sidewalks and other pedestrian paths listed in SCCC 5.05.430(b):

(1) Street Vending in the Stadium Pilot Program Area on Event Days and the associated customer queues scattered within a large, high-density pedestrian group presents a variety of risks to the vendors, their customers, other pedestrians, emergency

responders, vehicular traffic, and pedi-cab traffic

(2) Interfering with the ability of disabled persons and other pedestrians to safely follow a path of travel in both ingress and egress from the Stadium on Event Days

(3) Interfering with the ability of public safety or other emergency responders to quickly and safely travel through the crowds

(4) Street Vendors and associated customer queues extending into vehicular and pedi-cab driving lanes, and in close proximity to rail lines

(5) Unsafe food preparation, storage, and handling practices, including lack of hand washing facilities

(6) Inadequate waste disposal that can lead to pollution, or hazardous and unsanitary conditions

(7) Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group

(8) Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices which are particularly dangerous in the context of a large, highly dense, pedestrian group

(9) Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares) that are particularly dangerous in the context of a large, highly dense, pedestrian group

(10) Alcohol being sold to Stadium patrons without Alcoholic Beverage Control permits, particularly in situations in which Stadium halts alcohol sales prior to the conclusion of the event for safety purposes

5.05.450 Enforcement

(a) A violation of any requirement of this Article IV, except for permit requirements under SCCC 5.05.420, is punishable only by the following administrative penalty structure or permit revocation:

(1) One hundred dollars ($100) for a first violation

(2) Two hundred dollars ($200) for a second violation within one year of the first violation

(3) Five hundred dollars ($500) for each additional violation within one year of the first violation

(4) The Chief of Police or designee may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

(b) A Sidewalk Vendor operating within the Stadium Pilot Program Area without possessing a valid sidewalk vending permit issued in accordance with SCCC 5.05.420 is subject to the following penalties:

(1) Two hundred fifty dollars ($250) for a first violation

(2) Five hundred dollars ($500) for a second violation within one year of the first violation

(3) One thousand dollars ($1,000) for each additional violation within one year of the first violation.

(c) The Police Department shall make available instructions or other materials explaining a Street Vendor's right to request an ability-to-pay determination pursuant to SB 946."

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

SECTION 4: **Savings clause**. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: **Effective date**. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 18th day of July, 2023, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None

ORDINANCE NO. 2062

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 5.05 (SOLICITORS AND PEDDLERS) AND SECTION 9.05.165 (ACTIVITIES AND CONDUCT PROHIBITED IN PARKING FACILITIES ADJACENT TO THE STADIUM OR PARKING FACILITIES USED FOR STADIUM EVENTS) OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA"

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, in 2018 the State legislature passed SB 946 which placed significant limitations on local agencies' ability to regulate sidewalk vending;

WHEREAS, among other things, SB 946 requires that any time, place, and manner restrictions placed on sidewalk vending to be supported by objective health, safety, and welfare concerns, and limits the types of personal information that can be collected in the permitting process, and limits the enforcement activity that a public agency can conduct;

WHEREAS, existing City Code provisions are not strictly in compliance with the mandates of SB 946 and, therefore, have been largely unenforceable;

WHEREAS, the City recognizes and appreciates that sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities;

WHEREAS, as the State legislature recognized, the City has an interest in regulating the flow of traffic and ensuring the safety of pedestrians;

WHEREAS, the City has observed and experienced a dramatic increase in sidewalk vending around Levi's Stadium on event days, which has created significant health and safety concerns primarily related to traffic and pedestrians; and

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WHEREAS, the City Council deems it to be in the best interests of the City to create a limited term pilot project regulating vending on specified sidewalks and public paths surrounding Levi's Stadium on event days.

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SECTION 2: That a new Article IV (entitled "Stadium Pilot Project") is added to Chapter 5.05 (entitled "Solicitors and Peddlers") of Title 5 (entitled "Business Licenses and Regulations") of "The Code of the City of Santa Clara, California" to read as follows:

"**Article IV. Stadium Pilot Program**

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(c) "Stadium Pilot Program Area" means those specific streets or paths enumerated in SCCC 5.05.430.

5.05.410 Purpose.

The purpose of this Article is to strike a balance between supporting entrepreneurship and maintaining a safe environment for Stadium patrons by enacting a limited-term pilot program regulating the time, place, and manner in which Sidewalk Vendors may conduct business within the designated Stadium Pilot Program Area surrounding Levi's Stadium on Event Days, based upon objective health, safety, and welfare concerns.

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(5) If an individual or entity other than the applicant owns the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by the applicant, such individual or entity shall be identified in the manner prescribed by the Police Department

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(g) The decision of the Chief of Police or designee to deny, revoke, or not renew, a permit may be appealed under the procedures set forth in SCCC Sections 2.115.050 – 2.115.090.

(h) The permit issued pursuant to this Article, and all interests, rights and obligations pertaining thereto, are personal to the holder of such permit, and are not transferable or assignable, by operation of law or otherwise.

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(a) The following health, safety, or welfare concerns exist upon the sidewalks and other pedestrian paths listed in SCCC 5.05.430(b):

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(2) Interfering with the ability of disabled persons and other pedestrians to safely follow a path of travel in both ingress and egress from the Stadium on EventDays

(3) Interfering with the ability of public safety or other emergency responders to quickly and safely travel through the crowds

(4) Street Vendors and associated customer queues extending into vehicular and pedi-cab driving lanes, and in close proximity to rail lines

(5) Unsafe food preparation, storage, and handling practices, including lack of hand washing facilities

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(7) Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group

(8) Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices which are particularly dangerous in the context of a large, highly dense, pedestrian group

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(a) A violation of any requirement of this Article IV, except for permit requirements under SCCC 5.05.420, is punishable only by the following administrative penalty structure or permit revocation:

(1) One hundred dollars ($100) for a first violation

(2) Two hundred dollars ($200) for a second violation within one year of the first violation

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(4) The Chief of Police or designee may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

(b) A Sidewalk Vendor operating within the Stadium Pilot Program Area without possessing a valid sidewalk vending permit issued in accordance with SCCC 5.05.420 is subject to the following penalties:

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(c) The Police Department shall make available instructions or other materials explaining a Street Vendor's right to request an ability-to-pay determination pursuant to SB 946."

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

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SECTION 4: **Savings clause**. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: **Effective date**. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 18TH day of July, 2023, by the following vote:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Jain, Park, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None

23-211 **Agenda Date: 4/18/2023**

REPORT TO COUNCIL

SUBJECT
Action on Policy Options to Amend Regulations Related to Street Vending Activities in the City of Santa Clara

COUNCIL PILLAR
Deliver and Enhance High Quality Efficient Services and Infrastructure
Enhance Community Engagement and Transparency

BACKGROUND
Mr. Gibbins, owner of The Hot Dog Dude, operates a sidewalk vending business on the 5000 block of Stars and Stripes Drive near Levi's Stadium. Mr. Gibbins has attended Council meetings on multiple occasions to express concerns regarding the sidewalk vending that is occurring during events at Levi's Stadium. From his perspective, it appears that there are several unpermitted vendors conducting business on event days. It is also his belief that a lack of permitting enforcement is having a negative financial impact to his business and he has requested assistance from the City.

During the past event season, the Police Department experienced a drastic increase in the number of unpermitted food and merchandise vendors within the immediate footprint of large-scale stadium events. This increase has caused several health and safety concerns which are outlined below.

As currently written, the City Code and regulations do not align with recently adopted State legislation related to sidewalk vending. Consequently, the City's ability to address these health and safety concerns or the issues raised by Mr. Gibbins is constrained.

The purpose of this report is to provide the City Council with an overview of the current regulatory environment including the two pieces of recently adopted legislation that shape the options to regulate street vending on sidewalks as well as in the public right-of-way. In addition, this report provides policy options for the Council to consider that will, hopefully, better position the City to address the concerns raised by Mr. Gibbins as well as the health and safety concerns that have been identified by staff.

DISCUSSION
Definition of Sidewalk Vending
Pursuant to Senate Bill 946, a "sidewalk vendor" is defined as a person who sells food or merchandise on a public sidewalk or other pedestrian path with a non-motorized conveyance (e.g., pushcart, stand, display, pedal driven cart, wagon, showcase, rack, etc.). A sidewalk vendor can be either roaming or stationary.

Recent Legislation - Senate Bill 946
On September 17, 2018, the Governor approved Senate Bill 946 (Attachment 1) referred to as the

"Safe Sidewalk Vending Act", which imposes restrictions on the manner in which a local agency may regulate and enforce sidewalk vending within its jurisdiction by ordinance (these restrictions are commonly referred to as "time, place and manner" restrictions). This new law went into effect on January 1, 2019 and addresses sidewalk vending in four contexts: (1) generally, (2) in parks, (3) within the vicinity of farmers' markets and swap meets, and (4) within temporary special permit areas.

The City Attorney's Office issued a memo on January 11, 2019 to the Chief of Police and Director of Parks and Recreation addressing SB 946 and its impact on various portions of the City Code (Attachment 2). With the passage of SB 946, certain noted portions of the City's existing Code became unenforceable or require modifications to reflect the intent of SB 946, including:

- Chapter 5.05 regulates door-to-door and place-to-place peddling and solicitation. The City Code makes a distinction between sales for immediate delivery (peddling) and for future delivery (solicitation), but SB 946 does not. Under Article I, peddlers and solicitors must obtain a permit for "peddling activities." To obtain a permit, vendors are required to submit an application with personal identifying information, criminal history, fingerprints, County health inspections, pay fees and wear City-issued identification. In addition, Article II regulates solicitation from vehicles and mobile units, including but not limited to prohibiting selling or peddling of any articles at any place on any public street, sidewalk, right-of-way, public park or other public space for a period of time exceeding ten minutes within any two-hour period or within 500 feet of a school property.
- Chapter 12.05 restricts a person from obstructing sidewalks from the free passage of pedestrians, including doing so by annoying or molesting persons passing by. It does not provide any exception for those selling, or attempting to sell, food or merchandise.
- Title 9 prohibits individuals from bringing into "any portion of the parking areas" around the Stadium, and "perimeter sidewalk," any food, goods or merchandise "for the purposes of sale or barter".
- In addition, the City Code contains sections addressing enforcement, including the discretion to prosecute violation of code with civil, criminal or administrative penalties (§§ 1.05.070, 5.100.010), which are specifically preempted by SB 946.

Prior to the adoption of SB 946, local agencies (including cities and County Health Departments) could confiscate a vendor cart if health violations were committed, had prosecutorial discretion to enforce by issuing administrative or misdemeanor citations and could revoke a vendor permit after four (4) repeat offenses.

Under SB 946, criminal penalties are prohibited and administrative fines are limited pursuant to an "ability to pay" determination that reduces fines to 20% of the full fine if the violator earns less than 125% of the federal poverty line or receives certain means-tested government benefits. While a regulatory agency retains the right to revoke a permit under SB 946, a violator may be offered community service in lieu of the payment of fines and local agencies can either waive fines or make offers of alternative disposition.

A regulatory agency ***cannot*** require:

1. A vendor to operate within specific parts of the public right-of-way.
2. A vendor to obtain consent or approval from any non-governmental entity or individual before

he/she can sell food or merchandise.
3. A vendor to operate only in designated neighborhoods or areas. Stationary vendors can be prohibited in exclusively residential zones; or
4. Restrict the total number of vendors permitted to operate with a local jurisdiction.

The only exceptions to these restrictions are if there are “directly-related, objective health, safety or welfare concerns”. If these exceptions exist, local agencies ***may*** adopt requirements regulating time, place and manner restrictions including, but not limited to:

- Limitations on the hours of operation (so long as they are not unduly restrictive)
- Requirements to maintain sanitary conditions
- Requirements necessary to ensure compliance with the federal Americans with Disabilities Act and other disability access standards
- Requirements to obtain a permit for sidewalk vending and a valid business license
- Requirements to possess a valid California Department of Tax and Fee Administration seller’s permit
- Requirements for mitigation for littering or dumping
- Requirements for compliance with other generally applicable laws
- Requirements to submit certain information on his or her operations
- Prohibition of stationary sidewalk vendors in areas zoned for only residential uses

SB 946 separately addresses regulation of sidewalk vending in parks owned or operated by a local authority. Local authorities cannot prohibit a vendor from selling food or merchandise in a park; except when there is a signed concession agreement that provides exclusive rights for the sale of food or merchandise. In this case, stationary vendors can be prohibited. In addition to the exceptions related to health and safety, local authorities may also impose restrictions necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities as well as restrictions necessary to prevent undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of the park.

With respect to sidewalk vending at Farmer’s Markets and/or Swap Meets, a local authority may prohibit vendors in areas located within the immediate vicinity of a permitted certified farmers’ market or a permitted swap meet.

The final area affected by SB 946 relates to “temporary special permit areas”. 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”. This includes but is not limited to: 1) an encroachment permit; 2) a special event permit; or 3) a temporary event permit for purposes including but not limited to filming, parades or outdoor concerts. In this instance, a local authority may restrict vendors in the immediate vicinity of an area designated for a temporary special permit for the duration of the temporary permit.

Recent Legislation - Senate Bill 972
On January 1, 2023, Senate Bill 972 also went into effect (Attachment 3). SB 972 amends the California Retail Food Code to allow for non-potentially hazardous foods prepared in a cottage food operation to be served from a mobile food facility (such as a cart, wagon, rack, or other non-motorized conveyance). The code requires that these facilities meet certain health and safety standards. Mobile food operation with less than 25 square feet of display area or that sell only

prepackaged, non-potentially hazardous foods or whole uncooked food are exempt. Moreover, this legislation requires that local agencies establish pre-approved standard plans for facilities intended to serve as compact mobile food operation. Plans for individual units are not be required. Facilities with non-conforming structural conditions would be approved if those conditions do not pose a public health hazard. While facilities require a valid permit, this bill reduces the fees that can be collected, and violations can only be punishable by administrative fine.

Like the provisions in SB 946, fines are subject to the “ability to pay” determination and can be reduced or waived. If eligible for a reduction, the fine collected cannot exceed 20% of the full cost of the administrative fine. While the California Constitution requires the state to reimburse local agencies for certain costs mandated by the State, this bill eliminates the requirement for reimbursement.

Health and Safety Concerns
In addition to the need to align to State law, staff has identified a number of health and safety concerns associated with vendors on sidewalks, public right-of-way, in City parks, and on private property (e.g., parking lots) that should also be addressed. These concerns include:

- Unsafe food preparation and handling practices
- Inadequate waste disposal
- Traffic congestion
- Encroachment of public spaces and restricted access to sidewalks and public right of way
- Vulnerable populations subjected to street crimes
- Labor / employment law violations

The area around Levi’s Stadium is particularly sensitive given the number and size of major events, the impact to surrounding neighborhoods and the inherent opportunities to attract a large volume of vendors. Additional concerns include:

- Location of sidewalk vendors not incorporated into the City’s emergency evacuation plan or traffic management plan
- Propane tanks that could endanger the public if ignited in highly populated areas
- Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices
- Massive groups congregating, particularly near gates, bridges, parking lots, crosswalks, sidewalks, etc.

- Lines causing people to interrupt ADA paths and pedestrian, bicyclist and pedicab traffic
- Intoxicated attendees causing fights connected with massive groups traveling through narrow pathways
- Sizeable amounts of cash being exchanged and the potential for crime
- Sanitary issues, including but not limited to garbage, access to water for hand washing, etc.
- Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares)
- Alcohol being sold without Alcoholic Beverage Control permits
- Concerns of legitimate employment practices

Policy Options
The concerns expressed by Mr. Gibbins are indicative of a larger policy discussion regarding the City's interest in regulating street vending. As noted above, there are a variety of health and safety concerns that should be considered - especially in the area around Levi Stadium. Moreover, the State legislation has resulted in a City Code regulatory environment that is not enforceable as currently written, and therefore, requires modification.

To that end, staff is seeking policy direction from the Council on three (3) possible alternatives:

1. Prepare a temporary ordinance amendment and permit process for stadium event days that would **define areas where sidewalk vending could *not occur*** due to health and/or safety concerns, within a to-be-determined stadium footprint. The Ordinance would also contain provisions to prohibit vending in parking lots associated with the stadium event. The temporary Ordinance would be established for **a pilot period of August 2023 to January 2024** to evaluate impacts. At that time, the Police Department would return to the City Council with recommendations for implementation for the 2024 concert and NFL seasons, as well as how the Ordinance may need to be amended to apply in other areas of the City such as City parks.

   Pros: Addresses health and safety concerns along sidewalks and public right of way as well as in parking lots surrounding the Stadium. May provide greater disbursement of sidewalk vendors within the defined footprint. Defines area for ease of enforcement and establishes a safety perimeter to ensure access in the event of evacuation or other safety measures. Complies with SB 946.

   Cons: Does not address sidewalk vending in other parts of the City including City parks.

2. Direct staff to develop an Ordinance amendment to **address sidewalk vending *City-wide* to align City Code with current sidewalk vending legislation.** In this scenario, vending would be regulated and enforced throughout all areas of the City.

   Pros: Allows for a comprehensive approach to the health and safety issues related to sidewalk

vending across the City.

Cons: Given the complexity of a citywide approach, it is unlikely that a comprehensive amendment can be completed prior to the 2023 concert and NFL season. Implementation will have a significant impact on City Department workloads, especially the Police and Parks and Recreation Departments.

3. Direct staff to **eliminate all unenforceable City Code sections related to sidewalk vending (and include minor modifications to enforceable provisions of the code as necessary), but generally defer to State law on the matter, *without any meaningful local controls***.

   Pros: Complies with SB 946 and 972.

   Cons: Does not address health and safety concerns or address Mr. Gibbins' concerns related to the lack of enforcement of unpermitted vendors and negative financial impact.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact related to this report. Depending on the option selected by Council, there will be costs associated with the design and implementation of a permitting process, enforcement, on -going communication with vendors, etc. Staff will return with those estimated costs based on the Council's direction on a preferred option.

COORDINATION

This report was coordinated with the Parks and Recreation Department, Police Department, City Attorney's Office, and City Manager's Office

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <mailto:clerk@santaclaraca.gov> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Direct staff to proceed with Option #1 (pilot program in the area of Levi's Stadium from August 2023 through January 2024, with the Police Department returning to City Council with recommendations for implementation for the 2024 concert and NFL seasons, as well as how the Ordinance may need to be amended to apply in other areas of the City, such as City parks).

Reviewed by: Pat Nikolai, Chief of Police
Approved by: Office of the City Manager

ATTACHMENTS

1. Senate Bill 946
2. City Attorney's Memorandum dated January 11, 2019
3. Senate Bill 972
4. City Code Section 3.40
5. City Code Section 5.05
6. City Code Section 8.10
7. City Code Section 12.05
8. City Code Title 9

City of Santa Clara
The Center of What's Possible

City Attorney's Office
Legal Memorandum

Date: January 11, 2019

To: Chief of Police
Director of Parks & Recreation

From: John Belisle, Deputy City Attorney

Subject: SB 946 Sidewalk Vendors

Question Presented

What effect does the legislature's passage of SB 946 have on the enforcement of City Code sections regarding sidewalks and public rights of way, including in Chapters 8.10, 5.05, and 3.40?

Short Answer

SB 946 both (a) restricts the time, place and manner of regulations targeting individuals who sell food or merchandise on public sidewalks in and in parks, and (b) decriminalizes all violations, which has the following consequences:

1. Select sections of City Code must be revised, including sections restricting the time, place and manner of peddler/solicitor's activities on public rights-of-way and in parks, and those sections authorizing criminal enforcement and amounts of fines (See chart below).
2. The Police Department can no longer cite sidewalk vendors under Chapter 5.05 for infractions and misdemeanors. The City's enforcement is limited to administrative penalties.
3. The City must seek dismissal of all pending applicable criminal prosecutions, if any are pending.

Background

a. Description of the New Law

SB 946 decriminalizes and establishes requirements for local agencies to regulate sidewalk vendors. The general legislative intent is to "to promote entrepreneurship and support immigrant and low-income communities," and to respond to federal procedures for enforcing immigration laws against those convicted of a crime. A sidewalk vendor is defined as a person who "sells food or merchandise" upon a "public sidewalk or other pedestrian path," by "non-motorized conveyance or from their person," including while "roaming" and/or "stationary." It was chaptered on September 17, 2018, and is codified as Government Code sections 51036 – 51039.

Under Section 51038, a city cannot:

1) Specify where within a public right of way a vendor can operate, unless it is related to health, safety or welfare ("HSW") concerns. ((b)(1))
2) Prohibit a vendor from operating within a city park, unless the vendor is stationary and the city has granted an exclusive permit to a concessionaire. ((b)(2)(A).) But, the city can regulate time, place and manner of sales, if the regulations are related to HSW, the use and enjoyment of the park, and/or to prevent undue concentration of commercial activity. ((b)(2)(B).)
3) Require a vendor to obtain consent or approval from a nongovernmental entity (i.e., nearby restaurant) before the vendor operates. ((b)(3).)

4) Restrict vendors from operating in certain neighborhoods, except if restricting is related to HSW. ((b)(4)(A).) But, for neighborhoods zoned as exclusively residential, cities can prohibit stationary vendors from operating. ((b)(4)(B).)
5) Limit the number of vendors in the city, unless related to HSW. ((b)(5).)

Subject to the foregoing prohibitions, a city can:

1) Enact local laws related to objective HSW concerns that regulate time, place and manner, including requirements for sanitation, permitting, compliance with government (incl. health) inspections, licensing and taxation. (§ 51038(c).)
2) Restrict vendors from operating in immediate vicinity of: (§ 51038(d)
    a. Permitted certified farmers' markets.
    b. Permitted swap meets.
    c. Public areas designated for "temporary special permits." (including for parades, outdoor concerts).

In regulating sidewalk vendors, objective concerns of HSW cannot include "perceived community animus or economic competition." (§ 51038(e).) Moreover, the law does not affect the applicability of the California Retail Food Code (Health & Saf. Code § 113700, et seq.), which addresses food safety and inspections, including for mobile food facilities and farmers markets. (§ 51037.)

SB 946 broadly decriminalizes sidewalk vending, prohibits cities from punishing violations of related local ordinances as criminal infractions or misdemeanors, and reduces enforcement power. (§ 51039.) A person cannot be arrested, penalties are restricted to administrative fines, and the statute specifies fine amounts and maximums. A person's ability to pay must be considered "when assessing an administrative fine." ((f)(1).) Furthermore, a person's failure to pay an administrative fee cannot be punished by a criminal charge, nor can they be assessed any further "fines, fees, assessments, or any other financial conditions" beyond permit rescission. ((a)(2);(c).)

The new statute is <u>retroactive</u> for previous offenses. Individuals cited for previous violations of local ordinances affected by SB 946 "shall" have their pending charges dismissed, and prosecutions that have reached judgment may be petitioned for dismissal as well. (§ 51039(e)&(g).)

b. Santa Clara City Code

In different places, the City Code directly regulates the same type of activity targeted by SB 946:

- <u>Chapter 5.05</u> ("Solicitors and Peddlers") regulates door-to-door and place-to-place peddling and solicitation. The City Code makes a distinction between sales for immediate delivery (peddling) and for future delivery (solicitation), but SB 946 does not. Under City Code, Peddlers are individuals who "sells and makes immediate delivery or offers for sale…any goods, ware, merchandise or thing in the possession of the seller, at any place in the City other than at a fixed place of business." (§ 5.05.010(j).) Peddling is defined to include "traveling" and "selling or vending…on any street, sidewalk, right-of-way, park or other public place," including by mobile units (which includes a "trailer, push cart, wagon, bicycle, dray, conveyance or structure on wheels"). ((h),(k).) Because SB 946 does not distinguish between the time of delivery of the good for sale, it may apply to solicitors as defined by City Code: "any person who goes from place to place in the City, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offers property of any nature for <u>future</u> delivery." ((p).)

- Under Article I, and subject to exceptions, peddlers and solicitors must obtain a permit from the Police Department for "peddling activities." (§ 5.05.020.)
    - Applicants are required to submit an application signed under penalty of perjury with biographical details, a description of their peddling, and a statement about their criminal history, in addition to submitting fingerprints and paying fees for a background investigation. (§ 5.05.040.)
        - The Application requires a social security number from the applicant, and also reserves the right to deny applications if information is omitted.
    - The terms of the permit require inter alia County health inspections and proof thereof for mobile units; operating hours between 10:00 a.m. and one-half hour after sunset, except if by "licensed catering vehicles" selling food at/near industrial establishments; wearing identification; and upon request, that the peddler providing his or her name, organizational information, and a copy of their signature. (§5.05.170.)

- Article II regulates solicitation from vehicles and mobile units.
    - Solicitors are prohibited "while standing in any portion of the public right-of-way, including … sidewalks and driveways, to solicit, or attempt to solicit… business …from any person traveling in a vehicle along a public right-of-way." (§ 5.05.210(a).) It also prohibits solicitation to and from vehicles when the buyer or seller is in a public right-of-way. ((b), (c).)
    - Mobile unit peddlers (incl. pushcarts and wagons) are prohibited from:
        - Standing or stopping "for peddling purposes, at any place on any public street, sidewalk, right-of-way, public park or other public place, for a total period of time exceeding ten minutes within any two-hour period" or "stopping" for a sale on any public right-of-way within 500 feet of a school property. (§ 5.05.230.)
        - Stopping to peddle within 200 feet of another mobile unit. (§ 5.05.240.)
        - Peddling from an unapproved location, which is restricted as: (§ 5.05.260(a).)
            - Peddling is permitted only for the street-side of a sidewalk. ((3).)
            - Sidewalks must be a minimum width of 8 feet, with 3 feet for passage of pedestrian traffic. ((4).)
            - The dimensions of the mobile unit cannot exceed 8-feet high by 5-feet wide by 6-feet long, and must be parked to minimize use of the sidewalk and not obstruct it. ((5), (7).)
            - Peddlers cannot have more than their approved mobile unit, single stool and 33-gallon maximum trash container. ((6).)
            - Peddlers must carry general liability insurance. ((8).)
            - Permits will not be issued for specific locations, including: (§ 5.05.270.)
                - Immediately adjacent to residentially zoned property. (a)
                - Within 20-feet of a restricted parking/loading space. (b)
                - Within 20-feet of the entrance to any building, merchandise display, or crosswalk. ((c) – (e).)
                - Where it impedes traffic or is dangerous. ((f) – (h).)
        - Selling or peddling any articles, or to station any stand or cart for sale of any article or thing, in <u>any park or adjacent public park</u>, unless they are an approved concessionaire. (§ 5.05.280.)

- Chapter 8.10 ("Food and Food Establishments") regulates the sale of food, food establishments and restaurants, and requires individuals selling food to be permitted, to follow State and local health laws and regulations, and to submit to inspections. (§§ 8.10.020 – 8.10.130.) Food establishments are places where food is "kept, held, sold, prepared or compounded or offered for sale for human consumption," "not a public eating or drinking establishment," including grocery stores, fruit and vegetable stands, and markets or "other premises" where meat is kept, stored, handled, or offered for sale. (§ 8.10.010(b).) Restaurants are places, including "sandwich stands" and cafes, where "food or drink is prepared on the premises for sale or distribution elsewhere. (*Id.*, at (c).) The City's Health Officer, or duly-authorized representative are "authorized and directed to seize and destroy or denature any tainted, diseased, decayed or partially decayed or unwholesome meat, fish, shell fish, fowl, fruits, vegetables or other unwholesome food found within the city." (§ 8.10.110.)

- Chapter 3.40 (Business Tax) requires operators of businesses to pay taxes to the City. It requires that "parade vendors" ($15 per parade), "itinerant merchants" ($225 per 190 days), and peddlers ($ 113) each pay a business tax to the City.

The City Code also indirectly regulates sidewalks in parts that may be useful for further enforcing the health, welfare and safety thereon:

- Chapter 12.05 restricts a person from obstructing sidewalks from the free passage of pedestrians, including doing so by annoying or molesting persons passing by. (§ 12.05.010.) It does not provide any exception for those selling, or attempting to sell, food or merchandise.

- Title 9 ("Public Peace, Morals and Welfare") prohibits individuals from bringing into "any portion of the parking areas" around the Stadium, and "perimeter sidewalk," any food, goods or merchandise "for the purposes of sale or barter." (§ 9.05.165 (m).)

Lastly, the City Code contains sections addressing enforcement, including the discretion to prosecute violation of code with civil, criminal or administrative penalties (§§ 1.05.070, 5.100.010), which are specifically preempted by SB 946.

c. Permit practices and procedures

The Permits Unit of the Police Department manages all permitting for peddler activity, including receiving applications, granting or denying permits, and maintaining information with the HDL business license software. The Permits Unit does not maintain any internal written guidelines for its decision-making regarding granting and denying applications, and endeavors to only strictly follow and enforce the language of the City Code.

Analysis

SB 946 allows cities to require permits for sidewalk vending and to also restrict the time, place and manner ("TPM") of sidewalk vending, if it is done for objective health, safety and welfare ("HSW") reasons, or to address other specific concerns in parks and residential neighborhoods. Many of the restrictions in the Santa Clara City Code have an apparent relationship to HSW, such as to prevent obstruction of traffic. Thus, SB 946's new requirements and restrictions facially preempt only select sections of the City Code dealing with the permitting of peddlers and solicitors where restrictions do not have an obvious and justifiable reason, such as HSW. The restrictions that do not have legally-justifiable reasons will be subject to legal challenge when the new law takes effect on January 1, 2019.

Furthermore, sections of City Code regarding enforcement of code and prosecution of code violates are entirely preempted by SB 946's decriminalization of sidewalk vending.

City Code		**Enforceability Under SB 946**	**Limitations Under SB 946**	**Action/Revisions Required for Code or Policies**
§	**Description**			
5.05.020	Peddlers & Solicitors must be permitted	Enforceable	City cannot restrict specific locations unless for HSW	No action required
5.05.040	Required information for permit	Enforceable *in part*	Cannot require SSN	None for Code; Remove SSN field from SCPD Application
5.05.210	Solicitors cannot stand in public right-of-way and solicit to vehicles traveling on streets	Enforceable	City cannot restrict specific locations unless for HSW	No action required
5.05.230 (a)(1)	Mobile Unit Peddler (MUP) cannot stand or stop for "peddling purposes" in public right-of-way … for longer than total 10-mins within 2-hr period	*Likely* Enforceable *IF for HSW*	City cannot restrict specific locations unless for HSW	Articulate reasoning
5.05.230 (a)(1)	MUP cannot stand or stop for "peddling purposes" in public right of way …park for longer than total 10-mins within 2-hr period	*Likely* Enforceable *IF for HSW*	City cannot prohibit roaming vendors within parks, but may restrict if for HSW reasons or *use/enjoyment of park or to prevent undue concent. of comm. activity*	Articulate reasoning
5.05.230 (a)(2)	MUP cannot stand or stop for "peddling purposes" with 500-ft of school property	*Likely* Enforceable *IF for HSW*	City cannot restrict specific locations unless for HSW	Articulate reasoning
5.05.240	MUP cannot stop to peddle with 200-ft of other stopped MUP	Not Enforceable, unless for HSW	City cannot restrict specific locations unless for HSW	Articulate reasoning; Revise to remove or to narrow restriction

City Code		**Enforceability Under SB 946**	**Limitations Under SB 946**	**Action/Revisions Required for Code or Policies**
§	**Description**			
5.05.260	Permit locations and conditions			
(a)(2)	"issued only for a specific approved location which is stated on the permit."	Not *Enforceable, unless for HSW*	City cannot restrict specific locations unless for HSW, or to restrict stationary vendors from neighborhoods exclusively zoned as residential	Articulate reasoning; Revise to remove or to narrow restriction
(a)(3)	Only for street side of sidewalk portion	*Likely* Enforceable *IF for HSW*	City can restrict TPM of permits for HSW	Articulate reasoning
(a)(4)	Only for sidewalks of 8-ft width with 3-ft of passage for peds	*Likely* Enforceable *IF for HSW*	City can restrict TPM of permits for HSW	Articulate reasoning

(a)(5)	MUP/temp structure dimensions are less than 4'Hx5'Wx6'L	*Likely* Enforceable *IF for HSW*	City can restrict TPM of permits for HSW	Articulate reasoning
(a)(6)	Limited to (i) 1 approved MUP/temp structure, (ii) 1 stool, and (iii) 1 garage can	*Likely* Enforceable *IF for HSW*	City can restrict TPM of permits for HSW	Articulate reasoning
5.05.270	Prohibited Locations			
(a)	Immediately adjacent to residentially zoned property	Not Enforceable, unless for HSW	City "shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except" for HSW, or to restrict "stationary" vendors from neighborhoods exclusively zoned as residential	Articulate reasoning; Revise to remove or to narrow restriction
(b)	Within 20-ft of no-parking zone, handicapped parking space or driveway	*Likely* Enforceable *IF for HSW*	City can restrict TPM of permits for HSW	Articulate reasoning
(c)	Within 20-ft of entrance to buildings	Not Enforceable, unless for HSW	City "shall not restrict sidewalk vendors to operate only in a designated … area, except" for HSW, or to restrict "stationary" vendors from neighborhoods exclusively zoned as residential	Articulate reasoning; Revise to remove or to narrow restriction (e.g. types of buildings)
(d)	Within 20-ft of merchandise display window	Not Enforceable	City "shall not restrict sidewalk vendors to operate only in a designated …area, except" for HSW; "economic competition does not constitute" HSW reason	Revise to remove or to narrow restriction
(e)	Within 20-ft of crosswalk	*Likely* Enforceable *IF for HSW*	City can restrict TPM of permits for HSW	Articulate reasoning
(f) – (h)	Impedes traffic or is hazardous	Enforceable	City can restrict TPM of permits for HSW	No action required
5.05.280	Peddling is prohibited in parks and adjacent parking unless as an approved concessionaire	Not enforceable	City cannot prohibit vendors within parks, unless for HSW reasons or use/enjoyment of park or to prevent undue concent. of comm. activity; *or if* the peddler is stationary *and* the city has already granted an exclusive concessionaire permit	Revise to remove or to narrow restriction distance

City Code		Enforceability Under SB 946	Limitations Under SB 946	Action/Revisions Required for Code or Policies
§	Description			
1.05.070	City has discretion to criminally prosecute <u>any</u> violations of Code; recover costs of enforcement	Not Enforceable	Sidewalk vendors cannot be criminally cited	Specify penalties in amended ordinance Gov. Code § 51039
3.40.330	Peddlers are subject to City Business Tax	Enforceable	No specific restrictions on local taxations	No action required
8.10.020 - .130	Food Safety sections, including the right to seize/destroy tainted foods (§ 8.10.110)	Enforceable	None	No action required
12.05.010	Sidewalks: Individuals are prohibited from obstructing free passage of pedestrians on sidewalk	<u>Not</u> Enforceable	City cannot restrict specific locations unless for HSW	Articulate reasons; Revise to narrow and provide exception for sidewalk vendors/peddlers
12.05.040	Obstructing sidewalk without prior permission deemed guilty of infractions and $500 fine	<u>Not</u> Enforceable	Sidewalk vendors cannot be criminally cited for unpermitted vending	Revise and narrow: sidewalk vendors are subject only to specific administrative penalties IAW Gov. Code § 51039
9.05.165(m)	Stadium: prohibits individuals from bringing food and merchandise for sale onto parking areas and "perimeter" sidewalk	<u>Not</u> Enforceable	City "shall not restrict sidewalk vendors to operate only in a designated …area, except" for HSW; "economic competition does <u>not</u> constitute" HSW reason	Articulate reasons; Revise to remove or to narrow restriction

cc: City Manager's Office

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Chapter 3.40
BUSINESS TAX

Sections:

3.40.010 Purpose.

3.40.020 Effect on other fees and charges.

3.40.030 Chapter controlling.

3.40.040 Definitions.

3.40.050 Imposition of tax.

3.40.060 Business tax certificate required.

3.40.061 Business tax certificate application.

3.40.062 Appeal process.

3.40.070 Business location.

3.40.080 Branch establishments.

3.40.090 Notice not required by City.

3.40.100 When annual tax due and payable.

3.40.110 Penalty for delinquent or nonpayment.

3.40.120 Exemptions from tax.

3.40.130 Reserved.

3.40.140 Business tax constitutes debt to City – Collection of unpaid taxes.

3.40.150 Transferability – Changes to affidavit.

3.40.160 Issuance of business tax certificate.

3.40.170 Duplicate tax certificate.

3.40.180 Business tax certificate record.

3.40.190 Confidential documents.

3.40.200 Display of certificate.

3.40.210 Administrative rules and regulations.

3.40.220 Affidavit to be submitted where business tax based on number of employees – Information required.

3.40.230 Renewal generally – Affidavit and information required.

3.40.240 Statements not conclusive.

3.40.250 Extensions of time for filing sworn declarations.

3.40.260 Director of Finance duties.

3.40.270 Violations.

3.40.280 City Attorney's duties.

3.40.290 Enforcement.

3.40.300 Effect of annexation.

3.40.310 General schedule for person having fixed place of business within City.

3.40.320 Application of fees schedule in SCCC 3.40.310 to certain business within City.

3.40.330 Business subject to fixed tax.

3.40.340 Business without a fixed place of business in city.

3.40.350 Rental units.

3.40.360 Rental unit – Surcharge.

3.40.370 Vehicles used for commercial purposes.

3.40.380 Public markets.

3.40.390 Vending operator – Persons exempt.

3.40.400 Automatic amusement games, devices or coin-operated machines.

3.40.410 Shooting galleries, golf ranges and similar type businesses.

3.40.420 Theaters.

3.40.430 Entertainment definitions.

3.40.440 Entertainment tax certificate.

3.40.450 Class I entertainment tax.

3.40.460 Class II entertainment tax.

3.40.470 Class III entertainment tax.

3.40.480 Procedure.

3.40.490 Transferability.

3.40.500 Handbill distribution.

3.40.010 Purpose.

This chapter is enacted to raise revenue for municipal purposes and not for the purpose of regulation. The payment of a business tax required by this chapter, and its acceptance by the City, and the issuance of a business tax certificate to any person shall not entitle the holder thereof to carry on any business unless he or she has complied with all of the requirements of the City Code and all other applicable laws, nor to carry on any business in any building, on any premises, or in any location designated in such business tax certificate in the event that such building, premises or location is situated in a zone or locality in which the conduct of such business is in violation of any law. (Ord. 1923 § 1, 4-8-14).

3.40.020 Effect on other fees and charges.

Persons required to pay a business tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any other charge, fee, or tax as may be imposed by the City for the privilege of doing business within the city, or for the cost of regulating a business, and

such persons shall remain subject to the regulatory provisions of all other ordinances, codes, and resolutions of the City, including but not exclusive to regulations for zoning, building, fire, and safety. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.101).

3.40.030 Chapter controlling.

To the extent that the provisions of this chapter are inconsistent with the provisions of any other chapter of the City Code or parts thereof, the provisions of this chapter shall be deemed controlling. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.102).

3.40.040 Definitions.

The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(a) “Business tax certificate” means the document issued as a result of a completed tax affidavit and taxes paid.

(b) “Business” means all and every kind of profession, vocation, trade or activity, whether or not carried on for profit or gain.

(c) “Business community” means any and all areas of the City not zoned as residential.

(d) “Director” means the Director of Finance or his or her designee.

(e) “Employee” means any or all persons engaged in the operation or activity of any business, whether as owner, a corporate officer, a partner, agent, manager, solicitor or any and all persons employed or working in such business either full time, part-time, permanent or temporary.

(f) “Fiscal year” means an accounting period of twelve (12) months commencing upon the payment of a business tax and every twelve (12)-month period thereafter.

(g) “Handbill distributor” means one who distributes any commercial advertising, booklet, card, circular, dodger, newspaper, pamphlet, sample specimen, sheet or other printed or written notices, advertising any art, article, business, commodity, entertainment, meeting, merchandise, person, service, skill or thing offered, sold, or rendered for hire, reward, price, trade or profit.

(h) “Itinerant merchant” means any person, or employee, who engages in a business in the city by selling or offering for sale articles, goods, merchandise or wares of value, for period of not more than one hundred ninety (190) consecutive days and who, for the purpose of carrying on such business, hires, leases or occupies any room, building or structure on any real property on or adjoining any

street or public place in the city. Such person shall not be relieved from the provisions of this section by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or, by reason of conducting such business in connection with or as a part of any local business or in the name of any local dealer, trader, merchant or auctioneer.

(i) “Number of employees” means the number of persons employed in the business as anticipated, or the number of employees including owner(s) at time of renewal.

(j) “Parade vendor” means any person, or employee, who engages in the business of selling or offering for sale and immediate delivery any goods, merchandise, thing or wares in the possession of the vendor, at or along the route of any parade or procession operating pursuant to a permit from the City Council.

(k) “Person” means all domestic and foreign corporations, limited liability company, firms, associations, syndicates, joint stock corporations, partnerships of every kind, clubs or common law trusts, societies and individuals engaged in any business in the city other than as an employee.

(l) “Public market” means any business location where:

(1) A public market operator rents space to public market vendors and such space is not open to members of the general public more than three days in any seven-day period starting on Sunday except in the month of December, when no time restrictions shall apply; and

(2) Any new, used, or antique goods, clothing or other personal property or food items are offered or displayed for sale or exchange, and either:

(A) A fee is charged to the public market vendors for the privilege of offering or displaying such goods for sale or exchange to members of the general public admitted to the event or location, and/or

(B) A fee is charged to prospective buyers or where a membership or other card is required for admission to the event or location where such goods are offered or displayed for sale or exchange by public market vendors to members of the general public admitted to the event or location.

(m) “Public market operator” means any individual, partnership, corporation, business association, or other person or entity that sponsors, controls, manages, operates, or otherwise conducts a public market.

(n) “Public market vendor” means any individual, partnership, corporation, business association, or other person or entity that sells, exchanges, displays, or offers for sale or exchange any new, used, or antique goods, clothing, personal property or food items, or services at a public market. (Ord. 1923 § 2, 4-8-14).

3.40.050 Imposition of tax.

The City does hereby tax, as provided in this chapter, each and every kind of business transacted, conducted, exhibited or carried on in the city, at the rates named and prescribed in this chapter. If more than one business shares a business location, each business is required to apply and pay the prescribed tax. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.104).

3.40.060 Business tax certificate required.

It shall be unlawful for any person to transact or carry on any business in the city without first having paid the business tax to the City and having obtained a valid business tax certificate or renewal, in compliance with all applicable provisions of the City Code. (Ord. 1923 § 3, 4-8-14).

3.40.061 Business tax certificate application.

(a) Any person applying for a tax certificate shall make application upon a form provided by the Director, which form shall provide such information as may be required to show compliance with all City, State and Federal laws, and as may be necessary to determine ownership, the nature of the business, occupancy requirements, location, and the classification and amount of tax due.

(b) All applicants shall pay a tax computed on the number of employees or the fixed amount as provided in this chapter upon submitting the application.

(c) When necessary, the Director or designee shall refer an application or a notice of changed or new addresses to the appropriate City officers or staff for determination as to whether the proposed business activity and the premises in which it is to be conducted comply with applicable laws and ordinances. In the event it is determined that the proposed activity may not be maintained in compliance with the law, the Director or designee shall so inform the applicant and no new or renewed tax certificate may issue.

(d) Failure of the City to approve, deny, or act upon the application within one hundred eighty (180) days shall be deemed a denial of the application. (Ord. 1923 § 4, 4-8-14).

3.40.062 Appeal process.

An appeal from denial of issuance of a business tax certificate may be made under the procedures set forth in Chapter 2.115 SCCC. (Ord. 1923 § 5, 4-8-14; Ord. 2007 § 3, 11-19-19).

3.40.070 Business location.

Business tax fees are based on the actual physical location of the business within the jurisdictional limits of the City of Santa Clara. A mail stop, post office box or other such mail address is not considered a valid business location for the purpose of fire and safety inspection. All business not physically located within the jurisdictional limits of the City of Santa Clara are considered out-of-town and must pay taxes as established for out-of-town businesses regardless of whether they have a mailing address in the City of Santa Clara. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.106).

3.40.080 Branch establishments.

A separate business certificate must be obtained for each branch establishment or location of the business. When any person conducts, at one location, businesses classified separately by this chapter, such person shall pay the higher of the taxes. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.107).

3.40.090 Notice not required by City.

The Director of Finance is not required to send a renewal, delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send notice or bill shall not affect the validity of any tax or penalty due. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.108).

3.40.100 When annual tax due and payable.

The annual business tax imposed under the provision of this chapter shall be due and payable at the time of commencement of business activity or upon occupying space in the business community and such certificate shall expire twelve (12) months after the date of application. The tax for the renewal of such certificate shall be due and payable upon expiration of the prior certificate. No tax paid herein shall be refundable. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.109).

3.40.110 Penalty for delinquent or nonpayment.

The penalty for noncompliance shall be:

(a) Any person who fails to apply for a tax certificate and fails to pay the tax as determined on or within thirty (30) days after opening, engaging in business, or occupying space in the business community, shall be subject to a penalty of one hundred percent (100%) of the tax due.

(b) Every annual tax which is not received and paid within a period of thirty (30) days after the tax became due is hereby declared to be delinquent, and a penalty of one hundred percent (100%) of the tax will be added to the tax due.

(c) Whenever a check is submitted in payment of a business tax and said check is subsequently returned unpaid by the bank upon which said check is drawn for any reason, the taxpayer shall be

liable to pay a nonsufficient funds charge, the correct tax amount due, and a penalty.

(d) If any person fails to pay the annual renewal tax within ninety (90) days after the tax becomes due, his or her business tax certificate is considered revoked. The City is not required to send a notice of revocation for the revocation to be valid. Following revocation, the person must reapply for a new business tax certificate, pursuant to SCCC 3.40.061, and pay all associated penalties. Failure to reapply for a new business tax certificate shall constitute a violation, pursuant to SCCC 3.40.270. (Ord. 1721 § 2, 10-27-98; Ord. 1923 §§ 6, 7, 4-8-14. Formerly § 15-1.110).

3.40.120 Exemptions from tax.

No tax prescribed in this chapter shall be deemed or construed to apply to any of the following persons who are exempt from payment thereof upon submission of proof of exemption:

(a) Charitable and Nonprofit Organizations. Any church, school, charitable, benevolent or social organizations having exempt status under Federal tax law.

(b) Conflict With Federal and State Law. Any person conducting any business exempt by virtue of the Constitution, or applicable statutes of the United States or of the State of California from the payment to municipal corporations of such taxes as are herein prescribed.

(c) Disabled Veterans. Disabled veterans exemption pursuant to the requirements of Section 16001 or 16001.5 of the California Business and Professions Code.

(d) Employees. No person who is an employee shall be required to pay a tax for doing any part of the work of such business for which a tax certificate has been issued.

(e) Interstate Commerce. Every peddler, solicitor or other person claiming to be entitled to exemption from the payment of any tax provided for in this chapter upon the ground that such tax casts a burden upon his/her right to engage in commerce with foreign nations or among the several states or conflicts with the regulations of the United States Congress respecting interstate commerce, shall file an affidavit or a declaration under penalty of perjury with the Director of Finance describing the interstate or other character of his/her business which entitled him to such exemption.

(f) Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or the State of California for payment of such taxes as are herein prescribed. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.111).

3.40.130 Reserved.

(Ord. 1923 § 8, 4-8-14).

3.40.140 Business tax constitutes debt to City – Collection of unpaid taxes.

The amount of any tax imposed by this chapter shall be deemed a debt to the City. Any person carrying on any business covered in this chapter without having lawfully paid a tax to the City to do so shall be liable to a civil action in the name of the City in any court of competent jurisdiction for the amount of the required tax, penalties, and court costs. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.113).

3.40.150 Transferability – Changes to affidavit.

A certificate issued pursuant to this chapter shall not be transferable. When a certificate has been issued authorizing a specifically named person to transact and carry on a specific type of business at a specific location, the business shall, upon application in writing, and the payment of the prescribed fee, have such certificate records amended to include any change of name, type of business, or address. Any business for which such a change must be made shall pay a fee as fixed by resolution of the City Council for the handling and processing of such change. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.114).

3.40.160 Issuance of business tax certificate.

All certificates issued under the provisions of this chapter shall be issued by the Director of Finance or authorized employees and shall state the name of the business, the location of the business, the mailing address, the type of business being conducted at the listed location, the amount of the tax paid, the expiration date of the certificate and additional information that may be required. A business tax certificate will be issued upon the determination by the Director and any other necessary City departments that the business tax has been paid and that the business tax certificate affidavit information is accurate, that the business applicant is operating legally pursuant to all applicable Federal, State and local laws, and there are no business operations that endanger the public. (Ord. 1923 § 9, 4-8-14).

3.40.170 Duplicate tax certificate.

A duplicate business tax certificate may be issued by the Director of Finance to replace a previously issued certificate that has been lost or destroyed upon the owner filing a written request attesting to such fact, and paying a fee as fixed by the resolution of City Council for handling and processing of such request. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.116).

3.40.180 Business tax certificate record.

The Director of Finance shall maintain a “public business tax certificate record,” which shall contain the name of the business, the location of the business, the type of business and the time period for which the certificate is issued. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.117).

3.40.190 Confidential documents.

Except as provided for under Section 6254 of the Public Records Act, the affidavit, statements and any other documents required by this chapter to be filed, shall be deemed confidential in character and shall not be subject to public inspection, and shall be kept so that the contents thereof, shall not become known except to:

(a) The persons charged with administration of this chapter;

(b) City employees for the sole purpose of administering or enforcing any provisions of this article;

(c) Federal or State officials, or to a grand jury or court of law, upon subpoena. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.118).

3.40.200 Display of certificate.

Every person to whom a certificate is issued, shall keep the same conspicuously posted in or about the place where the business is located or conducted. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.119).

3.40.210 Administrative rules and regulations.

The Director of Finance may make rules and regulations not inconsistent with the provisions of this Code for the purpose of administering the provisions of this chapter. The Director of Finance shall further have the power to compromise any claims as to the amount of any tax due and paid. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.120).

3.40.220 Affidavit to be submitted where business tax based on number of employees – Information required.

Upon making application for the first certificate to be issued under this chapter where the amount of the tax is measured by the number of employees, the applicant shall furnish to the Director of Finance, for guidance in ascertaining the amount of such tax, a signed affidavit under penalty of perjury, upon a form provided by the Director of Finance, setting forth such information as may be necessary to determine the amount of the tax. The amount of the tax is determined by the number of persons engaged in the business at the time of application. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.121).

3.40.230 Renewal generally – Affidavit and information required.

In all cases, the applicant for renewal of a certificate shall submit to the Director of Finance, for guidance in ascertaining the amount of the tax to be paid by the applicant, a written affidavit under penalty of perjury upon a form provided by the Director of Finance, setting forth such information concerning the applicant's business as may be required by the Director of Finance to ascertain the amount of tax to be paid by such applicant pursuant to the provision of this chapter. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.122).

3.40.240 Statements not conclusive.

No statement set forth in any affidavit required by this chapter shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the City from collecting by appropriate action such sum as is actually due and payable under this chapter. Such affidavit and each of the several items therein contained shall be subject to review and verification by the Director of Finance, or authorized employees of the City. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.123).

3.40.250 Extensions of time for filing sworn declarations.

The Director of Finance shall have the power, for good cause shown, to extend the time for filing any sworn statement required under this chapter and in such case to waive any penalty that would otherwise have accrued. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.124).

3.40.260 Director of Finance duties.

The Director of Finance shall make diligent effort to discover all persons conducting any business in the city for which a certificate is required by the provisions of this chapter. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.125).

3.40.270 Violations.

The issuance of a certificate under this chapter shall not entitle the person(s) to engage in any business which for any reason is in violation of any law or provision of this Code.

(a) Separate Violation. The conducting of business in the city or occupying space in the business community, without first having procured a business tax certificate from the City to do so, or without complying with any and all regulations of such business contained in this chapter shall be a separate violation hereof for each and every day that such business is so carried on.

(b) Violations. Pursuant to SCCC 1.05.070, the City, in its prosecutorial discretion, may enforce violation(s) of the provisions of this chapter as a criminal, civil, and/or administrative action. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.126).

3.40.280 City Attorney's duties.

The Director of Finance may at any time request the City Attorney to bring a civil suit in the name of the City for the recovery of any tax from any person who conducts a business without procuring the certificate required by this chapter, or not paying the prescribed tax, and the recovery of such tax and penalties due thereon. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.127).

3.40.290 Enforcement.

The Director of Finance is hereby directed to enforce each and all of the provisions of this chapter, and the Chief of Police shall render such assistance in the enforcement hereof as may from time to

time be required by the Director of Finance. The Director of Finance, in the exercise of the duties imposed hereunder, and acting through deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this chapter have been complied with.

The Director of Finance, all duly authorized assistants and any police officers shall have the following powers:

(a) To enter free of charge, and at any reasonable time during business hours, any place of business required to be certified herein, and demand an exhibition of its certificate. Any person to whom a certificate is issued shall exhibit the same on demand.

(b) To issue citations for any violations of this chapter. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.128).

3.40.300 Effect of annexation.

All existing businesses brought under the jurisdiction of the City by annexation procedures shall conform to the provisions of this chapter within thirty (30) days of the effective date of such annexation. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.129).

3.40.310 General schedule for person having fixed place of business within City.

Every person having a fixed place of business within the city and who engages in any business not listed in SCCC 3.40.330 shall pay a tax based on the number of employees as defined and set forth in this chapter, according to the following rate schedules:

SCHEDULE NO. 100 –
COMMERCIAL EMPLOYEE(S)

1	$ 15.00
2 – 5	30.00
6 – 10	70.00
11 – 15	90.00
16 – 20	115.00
21 – 25	175.00
26 – 30	225.00
31 – 40	280.00
41 – 55	330.00

SCHEDULE NO. 100 –
COMMERCIAL EMPLOYEE(S)

56 – 75	380.00
76 – 100	460.00
101+	500.00

SCHEDULE NO. 200 –
PROFESSIONAL EMPLOYEE(S)

1	$ 15.00
2 – 3	30.00
4 – 6	70.00
7 – 10	90.00
11 – 20	115.00
21 – 25	175.00
26 – 35	225.00
36 – 40	280.00
41 – 45	330.00
46 – 50	380.00
51 – 55	460.00
56+	500.00

SCHEDULE NO. 300 –
MANUFACTURING EMPLOYEE(S)

1 – 3	$ 15.00
4 – 20	45.00
21 – 30	65.00
31 – 50	100.00
51 – 75	135.00
76 – 100	175.00
101 – 125	225.00
126 – 175	280.00

SCHEDULE NO. 300 –
MANUFACTURING EMPLOYEE(S)

176 – 225	330.00
226 – 300	380.00
301 – 400	460.00
401+	500.00

(Ord. 1721 § 2, 10-27-98. Formerly § 15-1.130).

3.40.320 Application of fees schedule in SCCC 3.40.310 to certain business within City.
Unless such business is otherwise specifically taxed by other provisions of this chapter, every business in the city shall pay a tax according to the following classification and rate schedule:

(a) Commercial. Any person engaged in the business of offering for sale or selling to the public at wholesale or retail any materials, commodities, goods, wares or merchandise shall pay a tax according to Schedule 100; or

(b) Professional and Semiprofessional Services. Any person engaged in the business of offering professional or semiprofessional services, as that term is ordinarily and commonly used and understood, and shall include those professions requiring governmental certification or a professional degree, but not limited to the practice or profession of: accounting, administrative support, advertising, analyst, appraiser, architectural services, auditing, chiropractic, consultant (all fields), dentistry, drafting, education, engineering (all fields), finance, law, medicine, mortician, optometry, physical therapist, property management, real estate (broker and agent), research and development, taxidermist, technical support, veterinary and writers shall pay a tax according to Schedule 200; or

(c) Manufacturing. Any person engaged in the business of making any article, device, good, or item from raw material, to be sold for wholesale shall pay a business tax according to Schedule 300; or

(d) Any person engaged in any other business and businesses herein not defined, including but not limited to those identified as home occupations by Chapter 18.100 SCCC, shall pay a tax according to Schedule No. 100. (Ord. 1721 § 2, 10-27-98; Ord. 1923 § 10, 4-8-14. Formerly § 15-1.131).

3.40.330 Business subject to fixed tax.
Any person carrying on or rendering any service as described in this section shall pay a tax in accordance with the following schedule, and shall be exempt from the tax set forth in SCCC 3.40.310:

Ambulance service plus $15.00 per ambulance used in such service	$ 45.00
Carnival, per day	150.00
Carnival concession, ride, sideshow, per each, per day	15.00
Christmas tree sales (as defined in SCCC 5.15.030)	150.00
Circus, per day	150.00
Circus concession, ride, sideshow, per each, per day	15.00
Detective agency	150.00
Entertainment permit Class I	
First year	263.00
Annual renewal	210.00
Entertainment permit Class II	
First year	90.00
Annual renewal	75.00
Entertainment permit Class III	
First year	413.00
Annual renewal	360.00
Escort service (personal)	150.00
Escort service (funeral)	150.00
Fortuneteller, (as defined in SCCC 5.45.010)	15.00
Intracity bus service and public transportation	150.00
Itinerant merchant (maximum 190 days)	225.00
Parade vendor (per parade)	15.00
Pawnbroker (as defined in SCCC 5.30.020)	150.00

Peddler (as defined in SCCC 5.05.010)	113.00
Promotional show, per day	150.00
Promotional show concession, ride, or sideshow, per each, per day	15.00
Pumpkin sales lots (as defined in SCCC 5.15.030)	150.00
Seasonal item sales lot (as defined in SCCC 5.15.030)	150.00
Secondhand dealer (as defined in SCCC 5.30.020)	150.00
Solicitor (as defined in SCCC 5.05.010)	113.00
State-licensed contractors	45.00
Taxicab, per vehicle	15.00
Taxicab stand	90.00

(Ord. 1721 § 2, 10-27-98. Formerly § 15-1.132).

3.40.340 Business without a fixed place of business in city.

Unless such business is otherwise specifically taxed by other provisions of this chapter, every person who does not have a fixed place of business in the city, but who is engaged in a business within the city, shall pay a tax of forty-five dollars ($45.00) a year, payable in advance. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.133).

3.40.350 Rental units.

(a) Every person engaged in the business of renting rooms, apartments, single-family houses, or other accommodations for dwelling, sleeping or lodging purposes, in the city shall pay the following tax:

(1) Three dollars ($3.00) per annum for each rental unit;

(2) Provided, however, that no tax shall be payable under this section, unless the person engaged in such business operates three or more rental units in the city.

(b) As used in this section, unit means a room or suite of two or more rooms (including, but not limited to single-family houses) designed for or used as separate accommodations for dwelling, sleeping or

lodging purposes by a person living alone or two or more persons living together. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.134).

3.40.360 Rental unit – Surcharge.

(a) It is contemplated that the City Council will from time to time adjust the amount of the surcharge fee by resolution to cover the changing cost of the mediation services involved with these businesses and to insure that the surcharge fee amount prorated to the rental units shall not exceed the cost of the program services made available.

(b) Any and all fees collected pursuant to this section are dedicated to and shall be used exclusively to pay the costs of the above services rendered in response to needs generated by the subject type of rental businesses.

(c) Those businesses covered under Chapter 3.25 SCCC, and paying the business tax under SCCC 3.40.310, Schedule No. 100, are exempt from paying the rental unit surcharge. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.135).

3.40.370 Vehicles used for commercial purposes.

Every person not having a fixed place of business within the city, who engages in any business in the city by means of a regular and established route or delivery system shall pay a tax of twenty-three ($23.00) per vehicle, per year. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.136).

3.40.380 Public markets.

(a) Each public market operator shall pay a tax and obtain a tax certificate from the Director of Finance. Without any reduction for any payment for a tax due or collected from any public market vendor, every public market operator also shall obtain a master certificate in lieu of an individual revenue certificate for each public market vendor who operates a business concession on the premises of a public market. Each public market operator shall collect a tax from each of its public market vendors and each public market vendor shall pay such tax to the respective public market operator in the amount of seventy-five cents ($0.75) per space for each space rented to each public market vendor for each day the public market is open to members of the public for business. This tax, measured by such space rentals, shall be paid to the Director of Finance by the public market operator on a monthly basis, notwithstanding any other provisions of this chapter, and in addition to any other tax that each public market vendor may have paid at any other location in the city.

(b) Except as provided in subsection (a) of this section, every person who engages in any business, whether upon a cost, rental, commission basis, or other form of compensation as a concession, or upon rented floor space in or upon the premises of any person covered under any provision of this

section, shall be required to pay a tax and obtain a separate and independent tax certificate pursuant to the appropriate provisions of this chapter and shall be subject to all provisions of this chapter.

(c) The tax payable by any public market vendor to any public market operator shall be paid by the public market operator to the City by the fifteenth (15th) day of the calendar month following the month during which the tax occurred, notwithstanding any other provisions of this section. Any such tax not paid as set forth above shall be delinquent and a penalty of one hundred percent (100%) will be added to the tax and charged to the public market operator responsible for payment.

(d) If the public market operator is an entity or organization that is otherwise exempted from the payment of the tax under this chapter, such public market operator shall be required, notwithstanding any other provisions of this chapter, to collect the tax from each public market vendor to whom the public market operator rents space and is obligated to pay the tax as set forth above. Each public market operator may collect tax from the public market vendors but failure to do so shall not relieve the public market operator of any obligations for payment.

(e) At the City's request, each public market operator shall provide written lists of all public market vendors who operated a business concession and the dates, the number of spaces and the number of days each public market vendor rented space at its public market.

(f) No public market vendor tax shall be paid by or collected from any public market vendor for participating in any display, fair, or other event held on or in City-leased or City-owned facilities. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.137).

3.40.390 Vending operator – Persons exempt.

Any person engaged in the business of a vending operator shall pay a tax of seventy-nine dollars ($79.00) per year.

The provisions of this section shall not apply to any newspaper publishing business which makes use of such machines in the distribution of newspapers. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.138).

3.40.400 Automatic amusement games, devices or coin-operated machines.

Any person who owns, keeps or maintains, or allows to be kept or maintained, in any building or place in the city owned, leased, managed or controlled by such person, any automatic amusement game for the purpose of permitting the same to be played or operated shall pay the following tax:

(a)	Automatic amusement games including, but not limited to pinball machines, video display games, electronic amusement devices, and peep show devices, per machine, per year	$60.00
(b)	Juke boxes, per machine, per year	$30.00
(c)	Billiard and pool tables	$ 8.00
	Maximum	$80.00
(d)	Bowling or tenpin lanes (non-coin-operated), per lane, per year	$ 8.00
	Maximum	$80.00

Nothing in this chapter shall be construed to permit the operation, keeping, maintaining or use of any gambling device or any apparatus or device, the use, possession, operation or control of which is prohibited by the laws of the State. (Ord. 1721 § 2, 10-27-98; Ord. 1923 § 11, 4-8-14. Formerly § 15-1.139).

3.40.410 Shooting galleries, golf ranges and similar type businesses.

Every person engaged in the business of operating a shooting gallery, trampoline, skating rink, miniature golf range, pitch and putt course, golf driving range, baseball batting range, or any similar place of business shall pay an annual tax according to rate Schedule 200 of SCCC 3.40.310. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.140).

3.40.420 Theaters.

Every person engaged in the business of operating a live or motion picture theater shall pay a tax based on the following rate schedule:

(a)	Theaters having zero to five hundred (500) seats shall pay, per year	$23.00

(b)	Theaters having five hundred one (501) to one thousand (1,000) seats shall pay, per year	$30.00
(c)	Theaters having one thousand one (1,001) or more seats shall pay, per year	$45.00

(Ord. 1721 § 2, 10-27-98. Formerly § 15-1.141).

3.40.430 Entertainment definitions.

The words and terms used for issuance of an entertainment tax certificate shall have the following meanings unless the context clearly indicates otherwise:

(a) “Class I entertainment” means any act, play, review, pantomime, scene, song, dance act, song and dance act, poetry recitation, fashion or style show conducted or participated in by any professional entertainer in or upon any premises to which the public is admitted.

(b) “Class II entertainment” means any act, play, review, pantomime, scene, song, dance act, song and dance act, poetry recitation, fashion or style show conducted or participated in by a nonprofessional person or persons in or upon any premises to which the public is admitted.

(c) “Class III entertainment” means the act of any person while visible to any customer, in any public place, unclothed or in such attire, costume or clothing as to expose to any person any portion of the body having a different pigmentation than the remainder of the body or any part of the pubic region or the anal region or crease of the buttocks of any such person.

(d) “Entertainment” does not mean or include:

(1) Mechanical music alone; or

(2) Dancing participated in only by customers; however, this subsection does not exempt exhibition dancing by a person or persons receiving compensation for such exhibition dancing.

(e) “Professional entertainer” means a person or persons who engages for livelihood or gain in the presentation of entertainment. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.142).

3.40.440 Entertainment tax certificate.

(a) No person shall conduct, permit or assist in conducting or permitting any entertainment as defined in SCCC 3.40.430(a), to be shown, staged, exhibited or produced in any premises to which the public

is admitted as, or as part of, a business unless and until a Class I entertainment tax certificate has been obtained from the Director of Finance.

(b) No person shall conduct, permit or assist in conducting or permitting any entertainment as defined in SCCC 3.40.430(b), to be shown, staged, exhibited or produced in or upon any premises to which the public is admitted as, or as a part of, a business unless and until a Class II entertainment tax certificate has been obtained from the Director of Finance.

(c) No person shall conduct, permit or assist in conducting or permitting any entertainment as defined in SCCC 3.40.430(c), to be shown, staged, exhibited or produced in or upon any premises to which the public is admitted as, or as a part of, a business unless and until a Class III entertainment tax certificate has been obtained from the Director of Finance. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.143).

3.40.450 Class I entertainment tax.

(a) The first year Class I entertainment tax shall be two hundred and sixty-three dollars ($263.00).

(b) The annual renewal tax for Class I entertainment shall be two hundred and ten dollars ($210.00).

(c) Where the applicant has a valid business tax certificate pursuant to SCCC 3.40.310 for the same location covering the same period of time, the amount of business tax paid shall be deducted from the first year Class I entertainment tax of two hundred and sixty-three dollars ($263.00) due. If the Class I entertainment tax is not paid within thirty (30) days of notification, the amount due shall be subject to a penalty of one hundred percent (100%). (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.144).

3.40.460 Class II entertainment tax.

(a) The first year Class II entertainment tax shall be ninety dollars ($90.00).

(b) The annual renewal tax for Class II entertainment shall be seventy-five dollars ($75.00).

(c) Where the applicant has a valid business tax certificate pursuant to SCCC 3.40.310 for the same location covering the same period of time, the amount of business tax paid shall be deducted from the first year Class II entertainment of ninety dollars ($90.00) due. If the Class II entertainment tax is not paid within thirty (30) days of notification, the amount due shall be subject to a penalty of one hundred percent (100%). (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.145).

3.40.470 Class III entertainment tax.

(a) The first year Class III entertainment tax shall be four hundred and thirteen dollars ($413.00).

(b) The annual renewal tax for Class III entertainment shall be three hundred and sixty dollars ($360.00). (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.146).

3.40.480 Procedure.

No Class III entertainment certificate shall be obtained from or issued by the Director of Finance unless and until approval from the City Council has been issued in accordance with Chapter 5.60 SCCC. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.147).

3.40.490 Transferability.

An entertainment certificate issued pursuant to this chapter shall not be transferable from person to person or location to location. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.148).

3.40.500 Handbill distribution.

The business tax imposed for handbill distribution by a business without a fixed location in the city is set forth in SCCC 3.40.340. Where handbill distribution is by the owner of the business advertised with a fixed location in the city, the business tax is set forth in SCCC 3.40.310 or 3.40.330. If the business holds an active business tax certificate and requests to distribute handbills, a change in the type of business shall be made according to SCCC 3.40.150. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.149).

The Santa Clara City Code is current through Ordinance 2056, and legislation passed through November 15, 2022.

Disclaimer: The City Clerk's Office has the official version of the Santa Clara City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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Code Publishing Company

Chapter 5.05
SOLICITORS AND PEDDLERS

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Article I. General Provisions

5.05.005 Purpose.

The purpose of this chapter is to protect against criminal activity, including fraud and burglary, minimize the unwelcome disturbance of citizens and the disruption of privacy, avoid traffic congestion and accidents, and to otherwise preserve the public health, safety and welfare by regulating and controlling door-to-door and place-to-place solicitors and peddlers. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06).

5.05.010 Definitions.

The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(a) “Approved location” means a site designated by the Chief of Police as an approved site from which a peddler, operating from a mobile unit, may sell his or her products.

(b) “Business” means and includes any type of product, good, service, performance or activity which is provided or performed, or offered to be provided or performed, in exchange for money, labor, goods or any other form of consideration.

(c) “Charitable” means and includes the words patriotic, philanthropic, social service, health, welfare, benevolent, educational, civic, cultural or fraternal, either actual or purported.

(d) “Chief of Police” means the elected Chief of the Santa Clara Police Department, or his/her duly authorized agents and representatives.

(e) “Contributions” means and includes the words alms, money, subscription, property or any donations under the guise of a loan or money or property.

(f) “Employee” means any person who works for or on behalf of the business operator.

(g) “Employment” shall mean and include services, industry or labor performed by a person for wages or other compensation or under any contract of hire, written or oral, express or implied.

(h) “Mobile unit” means any vehicle, truck, trailer, push cart, wagon, bicycle, dray, conveyance or structure on wheels, not firmly fixed to a permanent foundation, which is not required to have a license to operate issued by the California Department of Motor Vehicles.

(i) “Motor vehicle” means any automobile, truck, trailer or other conveyance requiring a license issued by the California Department of Motor Vehicles.

(j) “Peddler” means any person who sells and makes immediate delivery or offers for sale and immediate delivery any goods, wares, merchandise, or thing in the possession of the seller, at any place in the City other than at a fixed place of business.

(k) “Peddling” means traveling by foot, motor vehicle, mobile unit or any other type of vehicle, from place to place, and selling or vending any goods, wares, merchandise, products, or any other thing on any private property, or on any street, sidewalk, right-of-way, park or other public place. Peddling also means selling or vending any goods, wares, merchandise, products or any other thing from an approved location on any private property or on any street, sidewalk, right-of-way, park or other place.

(l) “Peddling activities” means the business of peddling; or the business of supplying, providing, or selling goods, wares, merchandise, products, or any other thing on consignment to be peddled by another person; or the business of supplying, providing, or renting mobile units or motor vehicles for use by another person in peddling.

(m) “Permittee” means the holder of a business permit.

(n) “Person” means a natural person or any firm, corporation, association, club, society or other organization.

(o) “Solicit” means and includes any request, offer, enticement, or action which announces the availability of a person for employment or availability to provide services for compensation, the sale of goods, or a request for money or other property; or any request, offer, enticement or action which seeks to purchase or secure employment or goods, or to solicit a contribution of money or other property. As defined herein, a solicitation shall be deemed complete when made whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money or other property takes place.

(p) “Solicitor” means any person who goes from place to place in the City, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offers property of any nature for future delivery, or for services to be performed in the future. This definition also includes any person who, without invitation, goes from place to place to request contribution of funds or anything of value, or sell goods or services for political, charitable, religious, or other noncommercial purposes.

(q) “Solicitation” includes all activities ordinarily performed by a solicitor. A solicitation is deemed complete when made, whether or not an employment relationship is created, a transaction completed, or an exchange of money or other property takes place. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-1).

5.05.020 Permit requirements and exemptions.

It shall be unlawful for any person to engage in solicitation or peddling activities within the City without first obtaining a permit issued by the Chief of Police; provided, however, that the following are exempt from the provisions of this section:

(a) Any solicitation made upon premises owned or occupied by an organization upon whose behalf the solicitation is made.

(b) Any communication by an organization soliciting contributions solely from persons who are members of the organization at the time of such solicitation.

(c) Any solicitation in the form of a collection at a regular meeting, assembly or service of a charitable person.

(d) Employees for wholesale houses or firms who sell to retail dealers for resale or sell to manufacturers for manufacturing purposes or to bidders for public works or supplies.

(e) Newspaper employees delivering newspapers by subscription.

(f) Any City-run or City-sponsored or sanctioned program. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-2).

5.05.030 Responsibility of supplier – Goods to be peddled.

Any person who supplies independent contractors or employees with goods, merchandise or wares to be sold by means of soliciting or peddling within the city shall make known in writing, to said person, the requirements of this chapter. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-3).

5.05.040 Permit application.

Every person or business intending to engage in the business of soliciting or peddling shall file an application for a permit with the Chief of Police. The application shall be signed under penalty of perjury and contain the following information:

(a) Name, physical description, residential address and telephone number of the applicant.

(b) The date of birth and driver’s license or other identification number of the applicant.

(c) The type of goods, merchandise, wares or services offered for sale.

(d) The method of solicitation, order taking or peddling.

(e) The name, address and telephone number of the company, sponsor or individual for which the orders are to be secured.

(f) The method of delivering the order.

(g) The hours of the peddling or solicitation.

(h) A statement as to whether or not the applicant has been convicted of any criminal offense, other than minor traffic violations. For any such offense, the nature of the offense, the date and place of conviction and the penalty imposed must be provided. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-4).

5.05.050 Fingerprints required.

In addition to the information required in SCCC 5.05.040, at the time of filing an applicant shall be fingerprinted with a record of such filed in the Police Department bureau of identification. The Chief of Police shall cause an investigation to be made of the statements in the application and of the background of the applicant. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-5).

5.05.060 Background investigation fees.

At the time the application is filed with the Department, the applicant shall pay a fee to cover the cost to the City of investigating the facts stated therein and processing and providing the identification card required in SCCC 5.05.080. The fee shall be established by resolution of the City Council and shall apply to each individual solicitor or peddler. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-6).

5.05.070 Application review and permit issuance.

(a) Upon receipt of an application, the Chief of Police, or designee, shall review the application as deemed necessary to ensure the protection of the public health, safety and general welfare.

(b) Within a reasonable time after receipt of the application, the Chief of Police shall endorse his/her approval on the application if the Chief determines that there is no ground for denial of the permit, as set forth in SCCC 5.05.090. Applicant shall be directed to pay a business tax as required in SCCC 5.05.130. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 5.05.080 (prior code § 7-8)).

5.05.080 Identification and photograph required.

Upon approval of permit application by the Chief of Police, the solicitor or peddler will be issued an identification card with photograph. Such identification issued shall be kept in the applicant's immediate possession at all times when engaged in the business of soliciting or peddling. Such individual shall present the identification card for examination upon demand by a City official enforcing

the provisions of this Code. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 5.05.070 (prior code § 7-7)).

5.05.090 Denial of permit.

(a) Upon the Chief of Police's review of the application, the Chief of Police may refuse to issue a permit to the applicant under this chapter for any of the following reasons:

(1) The investigation reveals that the applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application;

(2) The applicant has been convicted of a misdemeanor/felony involving a sex offense, trafficking in controlled substances, kidnapping, or any violent acts against persons and/or children;

(3) The applicant has been convicted of a misdemeanor/felony involving an offense against private property interests, such conviction being entered within the five years preceding the date of application. Such property offenses include, but are not limited to, larceny, false pretense, fraud, grand theft and embezzlement;

(4) The applicant has been denied a permit under this chapter within the immediate past year, unless the applicant can and does show to the satisfaction of the Chief of Police that the reasons for such earlier denial no longer exist;

(5) The applicant has failed to pay the application fee.

(b) The Chief of Police's disapproval and the reasons for disapproval shall be noted on the application, and the applicant shall be notified that his/her application is disapproved and that no permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form, or at the applicant's last known address. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-9).

5.05.100 Appeal from denial of permit.

The decision of the Chief of Police to deny, revoke or suspend a permit may be appealed under the procedures set forth in Chapter 2.115 SCCC. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06; Ord. 2007 § 4, 11-19-19. Formerly § 7-10).

5.05.110 Permit expiration.

The expiration of all permits issued under the provisions of this article shall coincide with the business tax certificate, unless an earlier expiration date is noted on the permit. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-11).

5.05.120 Transfer prohibited.

It shall be unlawful for any person other than the permittee to use or wear any permit or badge issued under the provisions of this chapter. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-12).

5.05.130 Business tax certificate required.

Each and every person or persons engaged in the business of soliciting or peddling shall be subject to business tax as stated in SCCC 3.40.330. The business tax certificate shall be issued if the Director of Finance finds:

(a) Approval to solicit or peddle has been granted by the Chief of Police; and

(b) The required tax therefor has been paid to the Director of Finance. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-13).

5.05.140 Persons claiming tax exemption.

Any solicitor or peddler who claims to be entitled to an exemption from the payment of any tax provided for under SCCC 3.40.120 shall inform the Chief of Police and provide him with information as to the individuals who will solicit and when the solicitation will be performed. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-14).

5.05.150 Application to persons requiring a certificate under other provisions of this chapter.

Any person maintaining a fixed place of business in the City; provided, that a tax is specifically required under Chapter 3.40 SCCC, shall not be required to pay any additional tax under the provisions of this chapter but shall be required to obtain the necessary peddler's or solicitor's permit and photo identification pursuant to SCCC 5.05.080 for each employee so engaged according to the provisions of this chapter. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 5.05.160 (prior code § 7-16)).

5.05.160 Application to certain persons not maintaining a fixed location within the city.

Every person not previously mentioned in this chapter and not maintaining a fixed place of business in the City but who regularly renders personal or other services or products either by appointment, calls, referral or otherwise from place to place or in the City shall be classified as a peddler and subject to the peddler provisions of this chapter. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 5.05.170 (prior code § 7-17)).

5.05.170 Conditions of permit – Operating regulations.

Each permit issued by the Chief of Police pursuant to this chapter shall be subject to the terms and conditions set forth in this chapter, as well as any other conditions specifically set forth in the permit.

The provisions of this chapter shall constitute operating regulations. It shall be unlawful for any person to engage in solicitation or peddling in violation of these provisions.

(a) All motor and mobile units operated by the permittee shall be inspected and certified by the Santa Clara County Health Department annually. (Per Health and Safety Code Section 113700.)

(b) All motor and mobile units operated by the permittee must have a current Health Department certificate, a current Department of Motor Vehicle registration sticker (if needed) and current vehicle insurance.

(c) All solicitation and peddling upon any private place, or any street, sidewalk, right-of-way, park or other public place in the City shall not occur between one-half hour after sunset and 10:00 A.M. of the following day, except this provision shall not apply to the sale of food items by licensed catering vehicles to employees of industrial establishments at or adjacent to such establishments, or to workers or employees at any construction job site.

(d) Each person who is engaged in solicitation or peddling shall, at all times while so engaged, wear in plain sight on his or her person an identification (ID) card, provided by the Chief of Police, containing such information, including a suitable photograph, as the Chief of Police may determine appropriate.

(e) Every peddler, upon the request of any public safety officer or official of the City, shall sign the peddler's name for comparison with the signature upon the license or card or the signature upon the license application.

(f) Every peddler who solicits orders for future delivery shall, if requested by the customer, provide a receipt plainly stating the quantity of each article or commodity ordered, the price to be paid therefor, the total amount ordered and the amount to be paid on or after delivery.

(g) Every peddler shall, if requested by the customer, provide his/her name, business address and telephone number and the name, business address and telephone number of the person, organization, or entity on whose behalf solicitation is being made. (Ord. 1811 § 1, 10-10-06).

5.05.180 Noise restrictions.

(a) No solicitor or peddler shall use, play or cause to be used or played any amplifier, loudspeaker, or any other instrument or device for the production of sound between one-half hour after sunset and 10:00 A.M. of the following day.

(b) No solicitor or peddler shall use, play or cause to be used or played an amplifier, loudspeaker, or any other instrument or device for the production of sound in such a manner as to create a

disturbance of the peace.

(c) No motor vehicle-based solicitor or peddler or mobile peddler shall use, play or employ any amplifier, loudspeaker, or any other instrument or device for the production of sound when the motor vehicle or mobile unit from which the solicitor or peddler is operating is stationary upon any private place, or any street, sidewalk, right-of-way, park or other public place. (Ord. 1811 § 1, 10-10-06).

5.05.190 Observance of "No Solicitors" or "No Peddlers" signs.
It is unlawful for any solicitor or peddler, whether licensed or unlicensed, to perform or attempt to perform the acts described in this chapter by ringing the doorbell or knocking at the door or otherwise calling attention to the person's presence of or at any residence whereon a sign bearing the words "No Solicitors," "No Peddlers" or words of similar import is painted or affixed so as to be exposed to public view, and no solicitor or peddler shall perform or attempt to perform any of the acts described in any building, structure or place of business whereon or wherein a sign bearing the words "No Solicitors," "No Peddlers" or words of similar import is painted or affixed so as to be exposed to public view. (Ord. 1811 § 1, 10-10-06).

Article II. Solicitation of Employment, Business or Contribution of Money or Other Property from Vehicles and Motor Vehicle-Based and Mobile Unit Peddlers

5.05.210 Prohibition of solicitation in public right-of-way or public parking lots.
(a) It is unlawful for any person, while standing in any portion of the public right-of-way, including but not limited to public streets, highways, sidewalks and driveways, to solicit, or attempt to solicit, employment, business or contributions of money or other property from any person traveling in a vehicle along a public right-of-way, including but not limited to public streets, highways or driveways.

(b) It is unlawful for any person, while the occupant of any vehicle, to solicit, or attempt to solicit, employment, business or contributions of money or other property from a person who is within the public right-of-way, including but not limited to a public street, highway, sidewalk or driveway.

(c) It is unlawful for any person to solicit, or attempt to solicit, employment, business or contributions of money or other property from any occupant of a vehicle, or from any person getting into or out of a vehicle within any parking lot or structure open to the public, where such parking lot is posted with a sign prohibiting such activity. (Ord. 1686 § 2, 4-9-96; Ord. 1811 § 1, 10-10-06. Formerly § 5.05.220).

5.05.220 Prohibition of solicitation in unauthorized locations within commercial parking areas.
(a) It is unlawful for any person to solicit or attempt to solicit employment, business or contributions of money or other property from a location within a commercial parking area other than an area within or served by such parking area which is authorized by the property owner (or the property owner's

authorized representative) for such solicitations. This section shall not apply to a solicitation to perform employment or business for the owner or lawful tenants of the subject premises.

(b) For purposes of this section, “commercial parking area” shall mean privately owned property which is designed or used primarily for the parking of vehicles and which adjoins one or more commercial establishments.

(c) This section shall only apply to commercial parking areas where all of the following occur:

(1) The owner (or person in lawful possession) of the commercial parking area establishes a written policy which provides area(s) for the lawful solicitation of employment, business, or contributions of money or other property in locations which are accessible to the public and do not interfere with the normal business operations of the commercial premises;

(2) A copy of said policy is submitted to the City Manager (or his/her designee) to be maintained in City files, including a copy to be maintained at the City Police Department; and

(3) The owner (or person in lawful possession) of the commercial parking area has caused a notice to be posted in a conspicuous place at each entrance to such commercial parking area. Said notice shall not be less than eighteen (18) by twenty-four (24) inches in size with lettering not less than one inch in height, and the notice shall not exceed, in total area, six square feet. The notice shall read substantially as follows:

> It is a misdemeanor to engage in the solicitation of employment, business or contributions of money or other property in areas of this commercial parking lot which are not approved for such activity by the property owner.

(Ord. 1686 § 2, 4-9-96; Ord. 1811 § 1, 10-10-06. Formerly § 5.05.230).

5.05.230 Parking restrictions – Motor vehicle-based and mobile unit peddlers.

(a) It is unlawful for any motor vehicle-based or mobile unit peddler to:

(1) Remain standing or stopped, for peddling purposes, at any place on any public street, sidewalk, right-of-way, public park or other public place, for a total period of time exceeding ten minutes within any two-hour period; or

(2) Make any stop, for the purpose of making any sale upon any public street, sidewalk, right-of-way, public park, or other public place, within five hundred (500) feet, measured along the traveled way of any public street or streets, of any school property.

(b) It is unlawful for any motor vehicle-based or mobile unit peddler to peddle from any motor vehicle or mobile unit upon any public street except from or at the side of such motor vehicle, which is nearest to the curb of such street. (Ord. 1811 § 1, 10-10-06).

5.05.240 Congestion restriction for motor vehicle-based and mobile unit peddlers.

It is unlawful for any motor vehicle-based or mobile unit peddler to stop to peddle from a motor vehicle or mobile unit within two hundred (200) feet of another motor vehicle-based or mobile unit peddler that has already stopped to peddle. (Ord. 1811 § 1, 10-10-06).

5.05.250 Inspections of motor vehicle-based and mobile units.

(a) All motor vehicle-based or mobile units, except bicycles, operated by the business operator shall be inspected and certified annually by the Santa Clara County Health Department.

(b) The business operator shall present each motor vehicle-based or mobile unit for inspection and certification annually by the Chief of Police.

(c) The exterior of the motor vehicle-based and mobile units shall be clean and in good repair, and not have any peeling, dents, rust, scratches or missing components which are discernible at a distance of five feet or more from the motor vehicle. (Ord. 1811 § 1, 10-10-06).

5.05.260 Approved location permit terms and conditions.

(a) It is unlawful for a person to peddle from, at, or in conjunction with, a mobile unit or temporary structure except at the approved location. An approved location permit to peddle may be issued by the Chief of Police, subject to the following terms and conditions:

(1) The person requesting an approved location permit at all times holds a current, valid business permit.

(2) Permits shall be issued only for a specific approved location which is stated on the permit.

(3) Permits shall be issued only for the street side of the sidewalk portion of a public street.

(4) Permits shall be issued only for sidewalks with an overall minimum of eight feet where there is at least three feet of unobstructed sidewalk area for pedestrian traffic.

(5) The mobile unit or temporary structure shall not exceed four feet high, five feet wide, and six feet long. Any mobile unit or temporary structure shall be parked in such a way as to use as little of the sidewalk as possible.

(6) No person shall use or have any movable or permanent stand, table, chair, ice chest or other ice container, equipment or device at any approved location other than the permitted mobile unit or temporary structure, one stool for his or her own use, and one trash/garbage container of no more than thirty-three (33) gallon capacity.

(7) No person shall block the movement of pedestrians along the sidewalk with a permitted mobile unit or temporary structure, stool, or trash/garbage container.

(8) Each approved location peddler, at his or her sole cost and expense, and during the entire term of his or her permit or any renewal thereof, shall obtain and maintain in full force and effect a commercial general liability insurance policy or other such policy as the office of the risk manager shall require with minimum policy limits to be set by the risk manager; issued by an admitted insurer or insurers as defined by the California Insurance Code; and providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the business permit, without thirty (30) days' written notice to the City prior to the effective date of such cancellation or reduction in coverage.

(b) The Chief of Police shall make approved location permits subject to such other terms and conditions, as the Chief deems necessary, to promote vehicular traffic safety and convenience and pedestrian safety and convenience.

(c) Permits issued under this section shall not be sold, assigned or transferred, and shall cover only the permittee to whom the permit is issued. A permittee may not move from the approved location without permission of the permits unit.

(d) If more than one application is received at the same time for the same location not currently assigned, assignment of the location shall be determined by lot. The drawing shall be made by someone other than the Chief and witnessed by another department employee. (Ord. 1811 § 1, 10-10-06).

5.05.270 Limitations on approved locations.

Approved location permits shall not be issued when any of the following conditions exist:

(a) The location is immediately adjacent to residentially zoned property.

(b) The location is within twenty (20) feet of any no-parking zone, red zone, fire hydrant, bus zone (marked or unmarked), passenger loading zone, loading zone, handicapped parking zone or driveway.

(c) The location is within twenty (20) feet of an entrance to any building.

(d) The location is within twenty (20) feet of any merchandise display window.

(e) The location is within twenty (20) feet of any marked or unmarked crosswalk.

(f) The location impedes a free running right turn lane on an inside corner island, traffic lane, bike lane or any area where a vehicle cannot stop or park legally.

(g) The location is wholly or partly within the right-of-way of a freeway or expressway, including any on-ramp, off-ramp, or roadway shoulder that lies within the right-of-way of a freeway or expressway.

(h) The location is considered hazardous due to unusual volume, accident history or restricted visibility, or similar reasons. (Ord. 1811 § 1, 10-10-06).

5.05.280 Solicitation and peddling in parks prohibited.

It is unlawful for any person in any public park, including any adjacent parking area, to:

(a) Expose, offer for sale or peddle any article or thing, nor station or place any stand, cart, or vehicle for the transportation, sale or display of any article or thing, or offer or provide any service for fee or compensation, or to solicit the future provision of any service for fee or compensation except any approved concessionaire acting by and under the authority of the director of parks and recreation;

(b) Announce, advertise or call public attention in any way to any article or service for sale or hire, including paste, glue, tack or otherwise post any sign, placard, advertisement or inscription;

(c) Solicit or attempt to solicit employment, business or contributions of money or other property from any other person in the park or within an adjacent public right-of-way. (Ord. 1811 § 1, 10-10-06).

Article III. Operating Regulations and Permit Conditions for Ice Cream Trucks

5.05.300 Definitions.

(a) “Ice cream truck” means any motor vehicle requiring a license from the California Department of Motor Vehicles, which is used to peddle, sell, or vend at retail prepackaged frozen dairy or water-based food products; or soft-serve or hand-dipped frozen dairy or water-based products; or prepackaged snack foods, bottled water and nonalcoholic beverages.

(b) “Ice cream truck business” means the business of peddling, selling or vending at retail, from a truck that travels from place to place on the streets within the city, prepackaged frozen dairy or water-based food products; or soft-serve or hand-dipped frozen dairy or water-based products; or prepackaged snack foods, bottled water and nonalcoholic beverages. (Ord. 1811 § 1, 10-10-06).

5.05.310 Permit required.

(a) It is unlawful for a person to maintain, manage, operate, conduct, control or own an ice cream truck business operating within the City unless the business is maintained and operated in strict compliance with a valid business permit.

(b) It is unlawful for a person, other than the business operator, to drive or ride on an ice cream truck that is in operation without having first obtained an ice cream business employee permit from the Chief of Police. A business permittee is deemed to have an employee permit for the purposes of driving or riding in the permittee's ice cream trucks. (Ord. 1811 § 1, 10-10-06).

5.05.320 Conditions of permit.

Each ice cream truck business permit issued by the Chief of Police shall be subject to the terms and conditions set forth in this chapter, as well as any other conditions specifically set forth in the permit. (Ord. 1811 § 1, 10-10-06).

5.05.330 Operating regulations.

It is unlawful for any person to violate the operating regulations set forth in this section in addition to the regulations set forth elsewhere in this chapter.

(a) Only prepackaged food items, soft-serve or hand-dipped frozen dairy products, bottled water, or nonalcoholic beverages may be offered for sale or sold.

(b) Sales from an ice cream truck shall be limited to the hours of 10:00 A.M. to one half-hour after sunset.

(c) Sales from ice cream trucks shall be limited to streets that have thirty (30) mile per hour speed limits or less.

(d) An ice cream truck shall not park for a period exceeding ten minutes at any one place.

(e) No sales shall be made while an ice cream truck is parked within seventy-five (75) feet of any intersection with any public street or streets, as measured along the traveled way.

(f) No person shall stop to vend from an ice cream truck within two hundred (200) feet of another ice cream truck that has already stopped to vend.

(g) The standard warning flashers shall be in operation immediately upon the truck stopping to vend and cease operation as the truck begins to move after vending. (Ord. 1811 § 1, 10-10-06).

5.05.340 Noise restrictions.

(a) No person shall use, play or employ any sound, outcry, amplifier, loudspeaker, or any other instrument or device for the production of sound from an ice cream truck when the ice cream truck is stationary, after 7:00 P.M. or one half-hour after sunset, whichever occurs first, or in such a manner as to create a disturbance of the peace.

(b) The Chief of Police may set reasonable restrictions on the type and use of any amplifier, loudspeaker, or any other instrument or device for the production of sound employed on an ice cream truck in order to prevent a disturbance of the peace. (Ord. 1811 § 1, 10-10-06).

5.05.350 Restriction on riders.

No one other than one driver and one additional person shall be allowed to ride in or on an ice cream truck that is in operation. The driver and the additional person may be the business operator or an employee of the business operator. In no event shall more than two persons ride in or on the truck while the truck is in operation. (Ord. 1811 § 1, 10-10-06).

5.05.360 Vehicle inspections – Certification.

(a) It is unlawful for a business operator to operate an ice cream truck that does not have a current, valid Health Department certificate, a current Department of Motor Vehicles registration sticker and current vehicle insurance. All ice cream trucks operated by the business operator shall be inspected and certified by the Santa Clara County Health Department annually. (Per Health and Safety Code Section 113700.)

(b) The business operator shall present each ice cream truck for inspection and certification by the Chief of Police or designee annually. For trucks which pass inspection, the Chief of Police or designee shall affix a suitable inspection sticker on each certified truck, identifying the truck as having successfully passed vehicle inspection.

(c) The business operator shall maintain each ice cream truck being operated in such condition that:

(1) All doors, windows, the hood and the trunk shall open and close securely;

(2) The inside of the ice cream truck shall be clean and free of litter and trash;

(3) There is a trash receptacle that shall be made accessible to the public when sales occur in which patrons can place package wrappers and trash;

(4) The exterior of the ice cream truck shall be clean and in good repair, and not have any peeling, dents, rust, scratches or missing components, which are discernible at a distance of five

feet or more from the truck;

(5) Advertising decals and price lists shall be placed only on the vending side of ice cream trucks.

(d) The business operator shall have and maintain in clean operating condition on each ice cream truck the following safety equipment:

(1) Signs painted or mounted on the front and rear of each truck using black four-inch-tall letters on a yellow background with a black one-inch border around each sign. The sign on the front and rear of each vehicle shall read “CHILDREN CROSSING” and be eight inches high by forty-eight (48) inches wide. An additional sign or signs shall be painted or mounted on the rear of each truck above the first sign and shall read “Warning,” using the same size letter and paint requirements.

(2) Standard warning flashers.

(3) Any other safety equipment required by the California Vehicle Code. (Ord. 1811 § 1, 10-10-06).

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Chapter 8.10
FOOD AND FOOD ESTABLISHMENTS

Sections:

8.10.010 Definitions.

8.10.020 Permit – Required – Exceptions.

8.10.030 Permit – Application – Examination of premises – Issuance and transferability renewal.

8.10.040 Permit – Fee.

8.10.050 Permit – Denial for failure to meet certain specifications.

8.10.060 Permit – Suspension or revocation for refusal to comply with State or local regulations.

8.10.070 Operation of business after suspension or revocation, etc., of permit prohibited.

8.10.080 Notification of City Health Officer upon sale or discontinuance of business.

8.10.090 Sanitary rules and regulations to be made by City Health Officer.

8.10.100 Presence of certain persons on business premises prima facie evidence of intent of business owner to sell food.

8.10.110 Duty of Health Officer to seize adulterated, etc., food.

8.10.120 Inspection required prior to sale of meat.

8.10.130 Sale of certain food products prohibited unless manufactured or prepared in accordance with State law.

Stat. Ref.: Sanitation of restaurants, see H. & S.C.A. §§ 28540 – 28584; sanitation requirements in food processing establishments, see H. & S.C.A. §§ 28280 – 28299; fruit containers, see H. & S.C.A §§ 28310 – 28322; bakeries, see H. & S.C.A §§ 28190 – 28216 (California Bakery Sanitation Law).

8.10.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) "Food" shall include all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof.

(b) "Food establishment" shall mean and include any public or private market, shop, store, delicatessen, candy factory, storehouse, warehouse, cold storage plant or other plant or other place not a public eating or drinking establishment in or about which any food, foodstuffs or provisions are kept, held, sold, prepared or compounded or offered for sale for human consumption. Such establishments will specifically include but shall not be restricted to grocery stores and warehouses, candy and confectioners' plants or stores, bakeries, bottling works, food and condiment packers, fruit and vegetable stands, markets or other premises where meat or meat food products, sausage, fish, dressed poultry, rabbit or game are kept, stored, handled, manufactured or offered for sale, ice stations and all food processing or cannery plants of any type.

(c) "Restaurant" shall mean any coffee shop, cafeteria, short order cafe, luncheonette, tavern, bar, sandwich stand, soda fountain, public school lunch room or cafeteria, labor and construction camp kitchens and dining rooms, public boardinghouse, club and any other eating or drinking establishment which sells or offers for sale food to the public, as well as kitchens, box lunch establishment, catering services, barbecue pits in which food or drink is prepared on the premises for sale or distribution elsewhere. Such term shall also include all cafeterias or restaurants serving commercial establishments as part of the organization and serving the public, whether as employees or visitors.

(d) "Utensils" shall include kitchenware, tableware, glassware, cutlery, containers, machinery, implements, receptacles used in processing, storage, distribution or serving of food or drink. (Ord. 942, Art. 1. Formerly § 12-1).

8.10.020 Permit – Required – Exceptions.

It shall be unlawful for any person to operate or conduct a restaurant or food establishment or to sell, offer for sale, distribute or have in possession for sale or distribution any food or drink intended for human consumption in the City unless such person shall possess a permit to do so from the Health Officer and has paid therefor the permit fee required to be paid by SCCC 8.10.040.

No permit shall be required of any food processing, cannery or other food establishment licensed by the State Department of Health, by the Bureau of Meat Inspection of the State Department of Agriculture or by the Meat Inspection Division of the United States Department of Agriculture. (Ord. 942, Art. 2 § 1. Formerly § 12-2).

8.10.030 Permit – Application – Examination of premises – Issuance and transferability renewal.

Application for the permit required in the preceding section shall be made in writing to the Health Officer. The Health Officer shall, upon receipt of such application, make or cause to be made an examination of the premises for which such permit is requested. If, upon examination, the Health Officer, his/her assistant or his/her duly authorized representative shall find such premises and the equipment therein to be in accordance with the laws of the State, the requirements of this chapter and the rules and regulations of the Health Officer of the City, the Health Officer shall issue a revocable permit for the conduct of such business. Such permit shall be issued annually for the calendar year and shall not be transferable. Renewal of permits shall be applied for and acted upon in the same manner. (Ord. 942, Art. 2 § 2. Formerly § 12-3).

8.10.040 Permit – Fee.

The permit fee for conducting a restaurant or food establishment shall be as established by Council resolution from time to time. (Ord. 942, Art. 2 § 3. Formerly § 12-4).

8.10.050 Permit – Denial for failure to meet certain specifications.

The City Health Officer is hereby empowered to deny or withhold a permit for which an application has been made if, in his/her judgment, the building, premises, equipment, apparatus or reasonable facilities for the establishing, maintaining, conducting or operating the business or institution for which a permit is requested are insufficient, unfit or incapable of being used, maintained or established to comply with this chapter or any other ordinances of the City or the rules and regulations of the City Health Officer or laws of the State. (Ord. 942, Art. 2 § 4. Formerly § 12-5).

8.10.060 Permit – Suspension or revocation for refusal to comply with State or local regulations.

The Health Officer of the City may suspend or revoke any permit authorized by this chapter whenever he finds that the holder of such a permit fails or refuses to comply with the laws of the State, this chapter or any rules and regulations of the City Health Officer. (Ord. 942, Art. 2 § 5. Formerly § 12-6).

8.10.070 Operation of business after suspension or revocation, etc., of permit prohibited.

If any permit issued pursuant to this chapter shall be denied, suspended or revoked by the Health Officer, it shall be unlawful during the period of such denial, revocation or suspension for any person to sell or traffic in any food or drink products in the City at such establishment. (Ord. 942, Art. 2 § 4. Formerly § 12-7).

8.10.080 Notification of City Health Officer upon sale or discontinuance of business.

Every person who shall sell, exchange, give away, abandon or discontinue any restaurant or food establishment within the city and every person who shall purchase or otherwise acquire any such restaurant or food establishment within the city shall immediately notify the Health Officer, his/her assistant or his/her duly authorized representative as to the fact thereof. (Ord. 942, Art. 2 § 6. Formerly § 12-8).

8.10.090 Sanitary rules and regulations to be made by City Health Officer.

The City Health Officer is hereby authorized to make such additional rules and regulations as may be necessary to secure the proper sanitation of all restaurants or food establishments and for the proper and orderly administration of this chapter. (Ord. 942, Art. 2 § 7. Formerly § 12-9).

8.10.100 Presence of certain persons on business premises prima facie evidence of intent of business owner to sell food.

The presence in or about any place of business of any person dealing in food or in or about any vehicle used by any such person for the delivery of any food shall be prima facie evidence of intent on the part of such person to sell the same and of the fact that he is holding or offering the same for sale. (Ord. 942. Formerly § 12-10).

8.10.110 Duty of Health Officer to seize adulterated, etc., food.

The Health Officer, his/her assistant and his/her duly authorized representative are hereby authorized and directed to seize and destroy or denature any tainted, diseased, decayed or partially decayed or unwholesome meat, fish, shell fish, fowl, fruits, vegetables or other unwholesome food found within the city. (Ord. 942. Formerly § 12-11).

Stat. Ref.: For State law as to Pure Foods Act, see H. & S.C.A. §§ 26500 to 26599.

8.10.120 Inspection required prior to sale of meat.

It shall be unlawful for any person or agent or employee of any person to sell, offer for sale, distribute or have in possession for sale or distribution in the City the flesh of any cattle, horse, sheep, lamb, swine or goat unless the same bears on each primal part thereof the "Inspected and Passed" stamp of an establishment operating under Federal or State inspection or approved municipal inspection. (Ord. 942. Formerly § 12-12).

Stat. Ref.: For State law as to meat and meat inspection generally, see Ag. C.A. §§ 18751 to 18755.

8.10.130 Sale of certain food products prohibited unless manufactured or prepared in accordance with State law.

It shall be unlawful for any person or agent or employee of any person to sell, offer for sale, distribute or have in possession for sale or distribution in the City any sausage or other meat food product

unless the same has been manufactured or prepared in accordance with the laws of the State. (Ord. 942. Formerly § 12-13).

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Chapter 12.05
OBSTRUCTIONS, LOITERING AND MISCELLANY

Sections:

12.05.010 Obstructing vehicles or pedestrians prohibited generally.

12.05.020 Loitering, standing or obstructing entrance of church, hall, theater, etc., prohibited.

12.05.030 Prohibition of unauthorized presence in posted parking lots of a closed commercial business.

12.05.040 Obstructing the public right-of-way prohibited.

12.05.050 Steam, interurban or electrically driven railway trains, etc.

12.05.060 Hours of operation of public parks.

12.05.070 Bicycles or motorcycles, etc. – Prohibited on sidewalks or in public parks.

12.05.010 Obstructing vehicles or pedestrians prohibited generally.

It shall be unlawful for any person to loiter, stand or sit in or upon any public highway, street, alley, sidewalk or crosswalk in the City so as to in any manner hinder or obstruct the free passage thereon of persons or vehicles passing along the same or so as to in any manner annoy or molest persons passing along the same. (Ord. 460 § 1. Formerly § 25-1).

12.05.020 Loitering, standing or obstructing entrance of church, hall, theater, etc., prohibited.

It shall be unlawful for any person to loiter, stand or sit in or at the entrance of any church, hall, theater or other place of public assemblage in the City so as to in any manner obstruct such entrance. (Ord. 460. Formerly § 25-2).

12.05.030 Prohibition of unauthorized presence in posted parking lots of a closed commercial business.

(a) Except as provided herein, it shall be unlawful for any person or vehicle to be present in a parking lot (or in an area of a parking lot designated as prohibited to unauthorized presence) that has been posted with a sign(s) prohibiting unauthorized presence.

(b) In situations where presence in the entire parking lot is not prohibited, as when a location has multiple businesses and some businesses may remain open, physical barricades and signs shall be placed to designate the area(s) in which there is to be no vehicle parking or human presence during the prohibited hours.

(c) The hours of prohibited presence shall be posted along with the signs prohibiting the unauthorized presence. In certain circumstances, the prohibitory text and hours of prohibition shall be painted on or affixed to the barricades designating the closed area(s).

(d) When barricades are used, the text shall be in letters no less than one inch in height. When signs are used, they shall be at least one foot by one foot and the text shall be in letters no less than one inch in height. The sign(s) and/or barricades shall read substantially in either of the following two ways:

WARNING

Unauthorized presence in
parking lot after business is closed
violates SCCC 12.05.030
_____ P.M. to _____ A.M.

or,

WARNING

Unauthorized presence in
parking lot after business is
closed, or in designated areas,
violates SCCC 12.05.030
_____ P.M. to _____ A.M.

(e) Violations of this section are a misdemeanor as provided in SCCC 1.05.070. (Ord. 1407, 9-8-80; Ord. 1469 § 2, 4-12-83; Ord. 1616 § 1, 8-7-90. Formerly § 25-2.1).

12.05.040 Obstructing the public right-of-way prohibited.

Any person who, without prior written permission from the City, shall maintain, place, cause or permit to be placed upon, in, across, under, or over the public right-of-way (as used herein "public right-of-way" shall mean the paved roadway, curb, gutter, park strip, sidewalk, and any other portion of the publicly owned real property up to the private property line) of the City any obstruction and who, after being notified by the City to remove the same, shall permit any such obstruction to remain upon, across, under or over the public right-of-way for twenty-four (24) hours after such notice, shall be deemed guilty of an infraction punishable by a fine of not more than five hundred dollars ($500.00). (Ord. 6; Ord. 1358 § 1, 6-28-77. Formerly § 25-6).

12.05.050 Steam, interurban or electrically driven railway trains, etc.

It shall be unlawful for any person in charge of any steam, interurban or electrically driven railway train or similar vehicles on rails to operate the same in such manner as to prevent the use of any street for the purpose of travel for a period of time longer than five minutes. The provisions of this section shall not apply to the operation of "through" freight trains when continuously operated without stopping through the City and when such freight trains consist of a series of freight cars, the overall length of which trains make it impractical to prevent the blocking of a street for such period of time. The provisions of this section shall apply to all "switching" operations of trains in the City. (Ord. 680. Formerly § 25-8).

12.05.060 Hours of operation of public parks.

(a) The public parks in the City shall be open daily to the public between the hours of 6:00 A.M. to one-half hour after sunset (dusk), except:

(1) Where there is posted conspicuously a sign limiting the hours when such facility is open to the public; and

(2) Until 10:00 P.M. if and when the facility is lighted.

(b) Any such public park or portion thereof may be declared closed to the public by the Director of Parks and Recreation at any time and for any interval of time, either temporarily or at regular or stated intervals, as is deemed necessary in carrying out the duties and responsibilities of the various divisions of the Parks and Recreation Department as set forth in Chapter 2.100 SCCC. The Director of Parks and Recreation is hereby authorized to promulgate rules and regulations to effectuate the purposes of this section.

(c) Every person other than City personnel conducting City business therein, who occupies or is present in any public park in the City during the hours in which the park is not open to the public, shall be deemed guilty of an infraction, punishable by a fine of not more that two hundred fifty dollars ($250.00). (Ord. 1953 § 1, 4-5-16; Ord. 1371 § 1, 1-10-78. Formerly § 25-8.1).

12.05.070 Bicycles or motorcycles, etc. – Prohibited on sidewalks or in public parks.

It shall be unlawful for any person to ride or drive any bicycle, motorcycle or other motor vehicle upon any sidewalk or in any public park in the City. (Ord. 302 § 1. Formerly § 25-9).

Cross reference – Bicycles generally, Chapter 10.35 SCCC.

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Title 9
PUBLIC PEACE, MORALS AND WELFARE

Chapters:

9.05 In General

9.10 Regulation of Noise and Vibration

9.15 Regulation of the Distribution of Certain Advertising Material Including Handbills

9.20 Restrictions on Certain Commercial Drug Paraphernalia Activities

9.25 News Racks

9.30 Trespassing

9.35 Regulation of Use of Parks by Large Groups

9.40 Regulation of Self-Service Display of Tobacco Products

9.45 Enforcement of Title

9.50 *Repealed*

9.55 Prohibition Against Discrimination

9.60 Food and Building Service Worker Retention

9.65 Hotel Service Worker Retention

9.70 COVID-19 Worker Recall Protections

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4/18/23

#9

Action on Policy Options to Amend Regulations Related to Street Vending Activities in the City of Santa Clara

Item #9 - **Report to Council 23-211**

April 18, 2023

1

City of Santa Clara
The Center of What's Possible

History

- Existing City Codes (Ch 3, 5, 8) prohibit roaming or stationary unpermitted businesses
- SB 946 (January 2019) decriminalized sidewalk vending and imposed restrictions on manners in which enforcement could occur
- January 2019 the City Attorney's Office authored a Memorandum to the Police and Parks and Recreation Departments addressing SB 946
- Late-2022 through early-2023, Mr. Gibbins spoke to City Council regarding permit enforcement of sidewalk vendors around Levi's Stadium on event days; City staff met with Mr. Gibbins
- At the January 31, 2023 City Council meeting, the Council directed staff to provide an update at a future meeting regarding Mr. Gibbins' concerns, including the Police Department's constraints on permit enforcement

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POST MEETING MATERIAL

City of Santa Clara
The Center of What's Possible

Overview of SB946

- Specific scope: Food/merchandise sold from a non-motorized stand/cart upon public sidewalk or other pedestrian path
- No public sidewalk limitations *except* to address obj. health, safety, welfare (HSW) concerns
- Other allowable regulations differ depending on location and circumstance
- Generally cannot limit total number of vendors in the City
- Generally, time/place/manner restrictions are allowed, but must be based on HSW
- No criminal penalties, administrative citations only, per a set fine schedule. "Ability to pay" determination process must be created, with statutory ability to reduce fine by up to 80%.

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City of Santa Clara
The Center of What's Possible

Challenges

- The current City Code does not align with recently adopted legislation
- The City has identified numerous health, safety and welfare concerns associated with the operation of sidewalk vendors without time, place and manner restrictions
- SB 946 details multiple constraints by location
  - General
  - Parks
  - Farmer's Markets and/or Swap Meets
  - Temporary Special Permit Areas
- Even with permissible restrictions enacted, repercussions for a violation will be inconsequential

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City of Santa Clara
The Center of What's Possible

Health and Safety Concerns

- Numerous health, safety, & welfare concerns exist with unregulated vendors on sidewalks, public right of ways, in City parks, and on private property (e.g., parking lots), including:
  - Encroachment of public spaces and concerns of sidewalk access and public right of way
  - Impediment to pedestrian, bicycle, pedicab, and vehicular traffic, in particular during egress at large events
  - Unsafe food preparation, maintenance, and handling practices
  - Inadequate waste disposal
  - Vulnerable population subject to street crimes
  - Labor / employment law violations

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City of Santa Clara
The Center of What's Possible

Levi's Stadium Area - Additional Concerns

- Location of sidewalk vendors not incorporated into emergency evacuation or traffic management plan
- Propane tanks, causing explosive concerns if ignited in highly populated area
- Hot, greasy cooktops without structures for safety clearances and required fire extinguishing devices
- Massive groups congregating, particularly near gates, bridges, parking lots, crosswalks, sidewalks, etc.
- Lines causing people to interrupt ADA paths and pedestrian, bicyclist and pedicab traffic
- Intoxicated attendees causing fights connected with massive groups traveling through narrow paths
- Sizeable amounts of cash being exchanged and potential for crime
- Sanitary issues, including but not limited to garbage, access to water for hand cleaning, etc.
- Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares)
- Alcohol being sold without Alcoholic Beverage Control permits
- Concerns of legitimate employment practices

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City of Santa Clara
The Center of What's Possible

Policy Options

#1 – Prepare a temporary ordinance amendment and permit process for stadium event days that would **define areas where sidewalk vending could *not occur*** due to health and/or safety concerns, within a to-be-determined stadium footprint. The Ordinance would also contain provisions to prohibit vending in parking lots associated with the stadium event. The temporary Ordinance would be established for **a pilot period of August 2023 to January 2024** to evaluate impacts. At that time, the Police Department would return to the City Council with recommendations for implementation for the 2024 concert and NFL seasons, as well as how the Ordinance may need to be amended to apply in other areas of the City such as City parks.

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City of Santa Clara
The Center of What's Possible

Policy Options (continued)

#2 - Direct staff to develop an Ordinance amendment to **address sidewalk vending *City-wide* to align City Code with current sidewalk vending legislation.** In this scenario, vending would be regulated and enforced throughout all areas of the City.

#3 - Direct staff to **eliminate all unenforceable City Code sections related to sidewalk vending (and include minor modifications to enforceable provisions of the code as necessary), but generally defer to State law on the matter, *without any meaningful local controls***.

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City of Santa Clara
The Center of What's Possible

Recommendation

Direct staff to proceed with Option #1:

Proceed with a pilot program in the area of Levi's Stadium from August 2023 through January 2024, with the Police Department returning to City Council with recommendations for implementation for the 2024 concert and NFL seasons, as well as how the Ordinance may need to be amended to apply in other areas of the City, such as City parks.

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April 18, 2023
Item # 9

POST MEETING MATERIAL

POST MEETING MATERIAL

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 946

CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk

vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.

(2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.

(3) Sidewalk vending contributes to a safe and dynamic public space.

(4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.

(5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

(6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

SEC. 2. Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.2. SIDEWALK VENDORS

51036. For purposes of this chapter, the following definitions apply:

(a) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

(b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(c) "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.

(d) "Local authority" means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

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

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(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) 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.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority,

unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the 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, any of the following:

(1) 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 on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.

(4) Requiring the 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 licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the sidewalk vendor.

(B) A description of the merchandise offered for sale or exchange.

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.

(E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

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

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the

Food and Agricultural Code and any regulations adopted pursuant to that chapter. A "swap meet" means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(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 vendors 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, an encroachment permit, special event permit, or temporary event permit, for purposes 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.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

51039. (a) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038 is punishable only by the following:

(A) An administrative fine not exceeding one hundred dollars ($100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars ($200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars ($500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

(i) An administrative fine not exceeding two hundred fifty dollars ($250) for a first violation.

(ii) An administrative fine not exceeding five hundred dollars ($500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars ($1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) 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.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.

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STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 972

CHAPTER 489

An act to amend Sections 113818, 113831, and 113868 of, and to add Chapter 11.7 (commencing with Section 114368) to Part 7 of Division 104 of, the Health and Safety Code, relating to retail food.

[Approved by Governor September 23, 2022. Filed with Secretary of State September 23, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 972, Gonzalez. California Retail Food Code.

(1) Existing law, the California Retail Food Code (the code), establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities and requires local health agencies to enforce these provisions. Existing law, for purposes of the code, defines a "cottage food operation" as an enterprise that has no more than a specified amount in gross annual sales, is operated by a cottage food operator, and has no more than 1 full-time employee within the registered or permitted area of a private home where the food products are prepared and packaged. Existing law provides for the regulation of microenterprise home kitchen operations and limits those operations to not serving more than 30 individual meals per day and not more than 60 individual meals per week and to no more than $50,000 in verifiable gross annual sales, as adjusted for inflation. Existing law authorizes the local enforcement agency to decrease the limit on the number of individual meals prepared based on the food preparation capacity of the operation.

This bill would authorize a cottage food operation or microenterprise home kitchen operation to serve as a commissary or mobile support unit for up to 2 compact mobile food operations if the cottage food operation or microenterprise home kitchen operation permit includes an endorsement from the local enforcement agency that the cottage food operation or microenterprise home kitchen operation is capable of supporting the preparation and storage of the food being sold from the compact mobile food operation and the storage and cleaning of the compact mobile food operation. The bill would authorize nonpotentially hazardous foods prepared in a cottage food operation to be served from a compact mobile food operation. The bill would define "compact mobile food operation" as a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance. The bill would require compact food operations to conduct only limited food preparation.

(2) The code defines "limited food preparation" as food preparation that is restricted to specified activities, including dispensing or portioning of

nonpotentially hazardous food, slicing and chopping of food on a heated cooking surface during the cooking process, and holding, portioning, and dispensing foods that are prepared at a satellite food service or catering operation.

This bill would include in the definition of "limited food preparation" dispensing and portioning for immediate service to a customer of food that has been temperature controlled until immediately prior to portioning or dispensing, slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility, hot and cold holding of food previously prepared at an approved permanent food facility, and reheating of food that has been previously prepared at an approved permanent food facility and held at the approved temperatures.

(3) The code defines "mobile food facility" and regulates what types of food may be provided at a mobile food facility. The code requires mobile food facilities to meet specified health and safety standards, including access to warewashing sinks, restrooms, and handwashing facilities and required quantities of potable water.

This bill would require a compact mobile food operation to meet the applicable requirements of mobile food facilities, except as specified. The bill would exempt a compact mobile food operation that has 25 square feet or less of display area and sells only prepackaged, nonpotentially hazardous foods or whole uncooked produce from the code, except as specified. The bill would authorize a compact mobile food operation to display or sell food outdoors, if certain conditions are met, including, among other things, overhead protection provided above all food display areas. The bill would require a compact mobile food operation that engages in the preparation of raw meat, raw poultry, or raw fish to meet additional specified requirements. The bill would authorize the enforcement agency to preapprove a standard plan for a standardized or mass-produced facility intended to serve as a compact mobile food operation and would authorize a compact mobile food operation to use that standardized or mass-produced facility after a final inspection, but without submitting plans for the individual unit. The bill would authorize the enforcement agency to collect a fee for the final inspection.

(4) Existing law requires commissaries and other approved facilities servicing mobile support units, mobile food facilities, and vending machines to meet specified standards.

This bill would authorize an enforcement agency to approve a facility with nonconforming structural conditions if those conditions do not pose a public health hazard. The bill would also require an enforcement agency to approve the storage of a compact mobile food facility in a permitted permanent food facility if, after initial inspection, the agency determines that the compact mobile food facility is protected from contamination. The bill would authorize the enforcement agency to charge a fee to administer these provisions.

(5) The code requires a food facility to have a valid permit to be open for business and authorizes the local enforcement agency to charge a fee for the permit or registration or related services.

This bill would authorize the local enforcement agency to reduce the fee for the permit, registration, or related service for an applicant seeking approval of a compact mobile food operation or related operations.

(6) Under existing law, violation of the code is a misdemeanor, unless otherwise specified.

This bill would make violations of the code by an operator or employee of a compact mobile food facility or a sidewalk vendor punishable only by an administrative fine. Additionally, by making changes to the definition of various crimes and by adding new crimes under the code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 113818 of the Health and Safety Code is amended to read:

113818. (a) "Limited food preparation" means food preparation that is restricted to one or more of the following:

(1) Heating, frying, baking, roasting, popping, shaving of ice, blending, steaming or boiling of hot dogs, or assembly of nonprepackaged food.

(2) Dispensing and portioning of nonpotentially hazardous food or dispensing and portioning for immediate service to a customer of food that has been temperature controlled until immediately prior to portioning or dispensing.

(3) Holding, portioning, and dispensing of any foods that are prepared for satellite food service by the onsite permanent food facility or prepackaged by another approved source.

(4) Holding, portioning, and dispensing of any foods that are prepared by a catering operation.

(5) Slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility or slicing and chopping of food on a heated cooking surface during the cooking process.

(6) Cooking and seasoning to order.

(7) Juicing or preparing beverages that are for immediate service, in response to an individual consumer order, that do not contain frozen milk products.

(8) Hot and cold holding of food that has been prepared at an approved permanent food facility.

(9) Reheating of food that has been previously prepared at an approved permanent food facility and held at temperatures required by this chapter.

(b) "Limited food preparation" does not include any of the following:

(1) Slicing and chopping potentially hazardous food, other than produce, unless it is on the heated cooking surface.

(2) Thawing.

(3) Cooling of cooked, potentially hazardous food.

(4) Grinding raw ingredients or potentially hazardous food.

(5) Washing of foods.

(6) Cooking of potentially hazardous foods for later use.

(7) Handling, manufacturing, freezing, processing, or packaging of milk, milk products, or products resembling milk products subject to licensing under Division 15 (commencing with Section 32501) of the Food and Agricultural Code.

SEC. 2. Section 113831 of the Health and Safety Code is amended to read:

113831. (a) "Mobile food facility" means any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. "Mobile food facility" does not include a "transporter" used to transport packaged food from a food facility, or other approved source to the consumer.

(b) "Single operating site mobile food facilities" means at least one, but not more than four, unenclosed mobile food facilities, and their auxiliary units, that operate adjacent to each other at a single location.

(c) "Compact mobile food operation" means a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

SEC. 3. Section 113868 of the Health and Safety Code is amended to read:

113868. "Portable" means equipment that is capable of being lifted and moved or has utility connections that are designed to be disconnected or of sufficient length to permit the unit to be moved for cleaning, and does not exceed 100 pounds (46 kg) in weight or is otherwise designed to be mobile.

SEC. 4. Chapter 11.7 (commencing with Section 114368) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

Chapter 11.7. Compact Mobile Food Operation

114368. A compact mobile food operation, as defined in subdivision (c) of Section 113831, shall meet the applicable requirements of Chapter 10 (commencing with Section 114294), except as provided in this chapter.

114368.1. (a) Any compact mobile food operation with 25 square feet or less of display area from which only prepackaged nonpotentially hazardous food and whole uncooked produce is sold is exempt from the requirements of this part, except that the facility shall comply with all of the following:

(1) Sections 113980, 114047, 114049, 114390, 114393, 114397, and 114399.

(2) Chapter 1 (commencing with Section 113700).

(3) Chapter 2 (commencing with Section 113728).

(b) (1) A local enforcement agency may inspect a compact mobile food operation that is exempt, as specified in subdivision (a), during the facility's hours of operation and other reasonable times on the basis of a consumer complaint or just cause.

(2) For the purposes of determining compliance with this chapter, a compact mobile food operation that is not exempt as specified in subdivision (a) is subject to permitting and routine inspections or inspections on the basis of a consumer complaint or just cause.

(c) The local enforcement agency may recover the costs of investigation and enforcement of this section, subject to any limitations in this part on fines issuable to compact mobile food operations.

114368.2. (a) Compact mobile food operations shall conduct only limited food preparation, as defined in Section 113818. Notwithstanding any other provision of this part, a compact mobile food operation, as defined in subdivision (c) of Section 113831, may display or sell food outdoors, if all of the following conditions are satisfied:

(1) Overhead protection are provided above all food display areas.

(2) Food items from the outdoor display are stored consistent with this chapter at all times other than during business hours.

(3) Outdoor displays comply with Section 113980 and have been approved by the enforcement agency if the compact mobile food operation is required to obtain a permit.

(b) A compact mobile food operation shall not sell food other than nonpotentially hazardous prepackaged food or whole produce, or conduct any food preparation, unless it meets the applicable operational requirements of this chapter, including applicable requirements for integral equipment, handwashing, and restroom access.

(c) Equipment that is required to be integral to a compact mobile food operation shall either be permanently attached to the primary unit or securely fastened to the primary unit by means that would prevent unintentional removal. Equipment may be considered integral despite being portable or otherwise removable for cleaning, maintenance, or as part of its regular function.

(d) A compact mobile food operation operating from an individual shall not conduct any food preparation or sell foods other than nonpotentially hazardous prepackaged food or whole produce.

114368.3 (a) (1) A permitted cottage food operation or microenterprise home kitchen operation may serve as a commissary or mobile support unit for up to two compact mobile food operations if the cottage food operation or microenterprise home kitchen operation permit includes an endorsement from the local enforcement agency that the cottage food operation or microenterprise home kitchen operation is capable of supporting the preparation and storage of the food being sold from the compact mobile

food operation and the storage and cleaning of the compact mobile food operation.

(2) Transactions at a compact mobile food operation operated by a cottage food operator shall constitute "direct sales" for the purposes of paragraph (4) of subdivision (b) of Section 113758.

(3) Transactions at up to two compact mobile food operations operated by a cottage food operator shall not count toward the annual gross sales restrictions in Section 113758 applicable to cottage food operations if the governing body has authorized this action.

(4) Nonpotentially hazardous foods prepared in a cottage food operation may be served from a compact mobile food operation.

(5) Food prepared in a microenterprise home kitchen operation may be served from a compact mobile food operation operated by the microenterprise home kitchen operation permitholder.

(6) The meal and gross annual sales limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 do not apply to the sale of nonpotentially hazardous food or produce for up to two compact mobile food operations operated by the microenterprise home kitchen operation if the governing body has authorized this action.

(7) With the authorization of the governing body and if the enforcement agency determines that the operation does not pose a public health hazard, a permitted microenterprise home kitchen operation may serve as a commissary for up to two compact mobile food operations. The meal and gross annual sales limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 apply unless the governing body sets a higher meal and income limitation.

(8) The governing body of a local jurisdiction that permits microenterprise home kitchen operations pursuant to Section 114367, may set the meal and income limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 at a higher level than provided in those paragraphs for microenterprise home kitchen operations that operate in conjunction with a compact mobile food operation. Notwithstanding this subdivision, the levels in effect, by statute or ordinance, as of January 1, 2023, shall remain in effect until changed by the local jurisdiction.

(b) (1) Existing permanent food facilities may be permitted to support the operations and storage of compact mobile food operations pursuant to the requirements of this section.

(2) Notwithstanding any other provision of this part, upon an evaluation verifying that a permanent food facility satisfies subdivisions (a) to (f), inclusive, of Section 114326, an enforcement agency shall approve the use of a permitted permanent food facility to satisfy the requirements of Section 114295 for a compact mobile food operation.

(3) Notwithstanding any other provision of this part, upon an evaluation verifying that the compact mobile food operation will be stored in a manner that protects the compact mobile food operation from contamination, an enforcement agency shall approve the storage of a compact mobile food operation in a permitted permanent food facility.

(4) Except when a determination is made by the enforcement agency that any nonconforming structural conditions pose a public health hazard, the enforcement agency may approve a facility to support operations of a compact mobile food operation.

(5) Plan submission shall not be required for an existing permanent food facility to support the operations of a compact mobile food operation when a determination is made by the local enforcement agency that the current operation and structural facilities of the permanent food facility can successfully provide the necessary functions of a commissary for a compact mobile food operation.

(6) An approved permanent food facility that will be used for cooling of food for a compact mobile food operation shall be approved by the enforcement agency for cooling.

(c) (1) Unless prohibited by local ordinance, an enforcement agency may allow the use of a private home for the storage of a compact mobile food operation if it determines, after an evaluation, that storage in the private home would not pose a public health hazard and that the compact mobile food operation will be stored in a manner that protects the compact mobile food operation from contamination.

(2) No more than two compact mobile food operations may be stored in a private home unless the enforcement agency finds that storage of more than two compact mobile food operations in a private home would not pose a public health hazard.

(3) The storage area within the home shall be designated and clearly identified upon approval and shall not be relocated without the review and approval of the local enforcement agency.

(4) Prepackaged nonpotentially hazardous food, whole fruits, and whole vegetables may be stored in the home prior to sale or preparation of that food in a compact mobile food operation.

(5) Food prepared in a private home shall not be used or offered for sale on a compact mobile food operation, unless it is a permitted cottage food operation or microenterprise home kitchen operation pursuant to subdivision (a). Violation of this paragraph may result in suspension or revocation of the permit to operate the compact mobile food operation.

(6) For purposes of determining compliance with this subdivision, a local enforcement agency may access, for inspection purposes, a private home where a compact mobile food operation is stored only if the representative has, on the basis of a consumer complaint, reason to suspect that the home is being used for food preparation, food storage, or unauthorized storage of utensils or other food facility equipment in violation of this subdivision.

(d) At the end of the operating day, potentially hazardous food that is prepared on or served from a compact mobile food operation shall be destroyed in a manner approved by the enforcement agency.

(e) For the purposes of this chapter, an endorsement by the local enforcement agency shall be a documented and recorded approval of compliance with applicable sections. An endorsement may include an inspection or evaluation, but shall not require a registration or permit.

(f) The enforcement agency may collect a fee for any permit, endorsement, inspection, or evaluation issued or conducted pursuant to this chapter in an amount that does not exceed the reasonable administrative costs of the enforcement agency.

114368.4. (a) Except as provided in subdivision (b), a compact mobile food operation that is approved for limited food preparation that prepares raw meat, raw poultry, or raw fish is subject to warewashing and handwashing facility requirements as outlined in Chapter 10 (commencing with Section 114294).

(b) (1) A compact mobile food operation may satisfy the requirements of Sections 114313 and 114314 by demonstrating access to a permitted auxiliary conveyance containing the necessary handwashing and warewashing sinks when operating at a site-specific location. The auxiliary conveyance may be operated by the same or a different permitholder. An enforcement agency may permit an auxiliary conveyance to serve multiple compact mobile food operations operating in close proximity to the auxiliary conveyance, as determined by the enforcement agency.

(2) If an auxiliary conveyance is not operated by the permitholder of the compact mobile food operation, the operator of the auxiliary conveyance shall obtain a permit from the enforcement agency to operate the auxiliary conveyance and service compact mobile food operations.

(3) The permit application for an auxiliary conveyance not operated by a compact mobile food operation shall include a site plan and shall be submitted to the enforcement agency at least two weeks prior to the operation of any food facility in conjunction with the auxiliary conveyance.

(4) The site plan for an auxiliary conveyance not operated by a compact mobile food operator shall show the proposed location and storage of the auxiliary conveyance, the proposed locations of any food facilities that will utilize the auxiliary conveyance, restrooms, refuse containers, potable water supply faucets, waste water disposal facilities, and all shared warewashing and handwashing facilities.

(c) A compact mobile food operation that is approved for limited food preparation that does not prepare raw meat, raw poultry, or raw fish shall do one of the following:

(1) Provide a three-compartment sink as described in subdivision (a) of Section 114313.

(2) Provide at least one two-compartment sink that complies with subdivision (e) of Section 114099.3.

(3) Provide a one-compartment sink with at least one integral metal drainboard, an adequate supply of spare preparation and serving utensils to replace those that become soiled or contaminated, and warewashing facilities that comply with subdivision (a) of Section 114313 in reasonable proximity to, and readily accessible for use by, food employees at all times.

(4) Maintain an adequate supply of spare preparation and serving utensils on the compact mobile food operation to ensure that utensils used for potentially hazardous foods are replaced with clean and sanitized utensils every four hours or as needed to replace those that become soiled or

contaminated. A compact mobile food operation that complies with this paragraph is not required to provide a warewashing sink.

(d) A compact mobile food operation that is approved for limited food preparation that does not prepare raw meat, raw poultry, or raw fish shall provide an integral handwashing sink with at least five gallons of potable water to operate with a potable water tank with a capacity of at least five gallons for handwashing.

(e) An enforcement agency may permit a compact mobile food operation to operate with an integral water tank smaller than specified under subdivision (c) or (d) of Section 114217 if the enforcement agency finds that the compact mobile food operation is operating in an area and manner that would allow for replenishment of the water supply as needed during operations.

(f) A compact mobile food operation shall submit, to the enforcement agency, written operating procedures that include the process of filling potable water tanks if it will operate with a water tank with a capacity of less than five gallons specified in subdivisions (c) and (d) of Section 114217.

(g) A compact mobile food operation that does not prepare raw meat, raw poultry, or raw fish is exempt from any provision of this part requiring it be equipped with a water heater or otherwise be supplied with warm water.

114368.5. (a) Upon receipt of complete, easily readable plans drawn to scale, and specifications satisfactory to the enforcement agency, an enforcement agency may preapprove a standard plan for a standardized or mass-produced individual unit intended to serve as a compact mobile food operation.

(b) A person proposing to operate a compact mobile food operation who has acquired an individual unit for which the construction of the compact mobile food operation has been built to approved plans shall not be required to submit plans for the individual unit, but instead shall be subject to a final inspection of the compact mobile food operation to ensure that the individual unit and proposed method of operation conform to the standard plans preapproved pursuant to subdivision (a). The permit application for a compact mobile food operation utilizing a preapproved individual unit shall include a certification that the applicant has not substantially altered the individual units from the plans preapproved pursuant to subdivision (a). The enforcement agency may collect a fee in the final inspection in an amount that does not exceed the reasonable administrative costs to the enforcement agency.

(c) The repair of equipment or integral fixtures on a compact mobile food operation or the replacement of equipment and fixtures on a compact mobile food operation with substantially similar equipment or fixtures is not a remodel, and the repair or replacement of equipment or fixtures does not require the submission of plans to an enforcement agency.

(d) A local governing body may waive or reduce a fee for the permit, registration, or related services for an applicant seeking approval of a compact mobile food operation or related operations.

(e) All new and replacement food-related and utensil-related equipment for a compact mobile food operation shall be certified or classified for sanitation by an American National Standards Institute accredited certification program, or a certification program accredited by another accreditation body recognized by the enforcement agency as providing substantially similar food safety and operational standards. In the absence of an applicable certified sanitation standard, food-related and utensil-related equipment shall be evaluated for approval by the enforcement agency.

(f) All new and replacement electrical appliances for a compact mobile food operation shall meet applicable Underwriters Laboratories standards for electrical equipment as determined by an American National Standards Institute accredited certification program or a certification program accredited by another accreditation body recognized by the enforcement agency as providing substantially similar food safety and operational standards.

114368.6. A compact mobile food operation is exempt from Section 113947.1 if the operator and any individual who is involved in the preparation, storage, or service of food for the compact mobile food operation has obtained a food handler card that meets the requirements of Section 113948.

114368.7. A compact mobile food operation is exempt from the requirements of Section 114315 if the compact mobile food operation operates with multiple employees or operators and the compact mobile food operation may remain operable by a single individual so that employees or operators may alternate use of a restroom.

114368.8. (a) Notwithstanding subdivision (a) of Section 114395, a violation of this part by an operator or employee of a compact mobile food operation is punishable only by an administrative fine.

(b) A violation of any provision of this part or regulation adopted pursuant to this part by an operator or employee of a compact mobile food operation or a sidewalk vendor shall not be punishable as an infraction or misdemeanor, and an operator or employee of a compact mobile food operation or a sidewalk vendor alleged to have violated any of those provisions is not subject to arrest except when independent grounds for that arrest exist under law.

(c) Except as provided in paragraph (d), each offense by an operator or employee of a compact mobile food operation or a sidewalk vendor may only be punished by a fine consistent with the following:

(1) A notice of violation detailing the violation, including the applicable provision of this part or regulation adopted pursuant to this part.

(2) An administrative fine not exceeding one hundred dollars ($100) for a second violation within one year of the first violation.

(3) An administrative fine not exceeding two hundred dollars ($200) for a third violation within one year of the first violation.

(4) An administrative fine not exceeding five hundred dollars ($500) for each additional violation within one year of the first violation.

(d) If a compact mobile food operation is required to obtain a permit from the enforcement agency, operating without a permit may be punishable by a fine not to exceed three times the cost of the permit in lieu of the administrative fines referenced in subdivision (c). An enforcement agency shall not issue any fines in excess of the amounts allowable pursuant to subdivision (c) prior to January 1, 2024.

(e) (1) When assessing an administrative fine for a first-time offense, pursuant to this section, the hearing officer shall take into consideration the person's ability to pay the fine. The enforcement agency shall provide the person with notice of their right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632 of the Government Code, the enforcement agency shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this section.

(3) The enforcement agency may waive the administrative fine or may offer an alternative disposition.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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