



CITY COUNCIL Staff Report

Meeting Date: February 12, 2019
To: Mayor and City Council
From: Scott Chadwick, City Manager
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Subject: Discuss and introduce if desired a draft ordinance required by a change in state law, which would amend title 8 of the Carlsbad Municipal Code by repealing and replacing chapter 8.32 to create a sidewalk and food truck vending equipment permit program

Recommended Action

Discuss and introduce if desired a draft ordinance in compliance with California Senate Bill 946, which would amend title 8 of the Carlsbad Municipal Code ("CMC") by repealing and replacing chapter 8.32 (Peddlers, Solicitors, Vendors and Canvassers) to create a sidewalk and food truck vending equipment permit program. Following discussion, staff recommends that the City Council take one of the following actions:

- (1) Introduce the proposed ordinance for adoption as-is, which would include the repeal of existing CMC chapter 8.32;
- (2) Revisit the proposed ordinance for introduction at a future Council meeting, after staff conducts community outreach and/or modifies the proposed ordinance as per Council direction; OR
- (3) Maintain the status quo, leaving the city with no enforceable ordinance against sidewalk vendors and repeal unenforceable provisions in existing CMC chapter 8.32 as part of the ongoing municipal code update.

Executive Summary

On September 24, 2018, the California Legislature passed Senate Bill 946 (SB 946), which authorizes the statewide governance of sidewalk vendors in all public locations and right-of-ways. The law prohibits California cities from imposing criminal penalties for sidewalk vending activity, and further requires that a city maintain a vending equipment permit or licensing program in order to impose administrative penalties. SB 946 went into effect January 1, 2019.

CMC section 8.32.010 currently bans street and sidewalk vending with limited exceptions; it does not "substantially comply" with SB 946, as required under state law. Thus, the city's current ordinance and enforcement scheme is in violation of SB 946. The City Attorney's Office recommends that the entirety of chapter 8.32 be repealed and replaced with a new chapter that comprehensively regulates: (1) sidewalk vending on public property; (2) food truck vending on

public property; and (3) certain other sales or solicitations on public property. Although not required by SB 946, this approach will allow for uniform regulation of sidewalk vending and food truck vending, while maintaining current regulations pertaining to activities such as street fairs.

Discussion

A. Legislative Intent

Sidewalk vending has traditionally been an area with irregular regulation throughout California cities. In recent years, vending from both food trucks and sidewalk conveyances has become extremely popular in larger metro cities, most notably Los Angeles and the San Francisco Bay area. Sidewalk vendors are often part of marginalized and ethnic communities and sell merchandise and food items which are not otherwise readily available.

The passage of SB 946 was intended by the California legislature to provide legal protection to sidewalk vendors and standardize sidewalk vending regulation statewide. SB 946 requires that cities allow sidewalk vending on the public right-of-ways. Cities may create a permitting or licensing program for sidewalk vendors to administratively regulate vending, subject to certain exceptions.

Acceptable exceptions include prohibiting vending in locations where an exclusive concessions agreement is in effect and the use of “time, place and manner” restrictions that directly relate to objective health, safety or welfare concerns. Unacceptable restrictions include completely banning vending within parks, banning roaming vendors within residential areas or restrictions motivated by a desire to protect pre-existing businesses. Limitations on the hours of operation may not be “unduly restrictive;” in nonresidential areas, the hours of operation limitations may not be more restrictive than those imposed on other businesses or uses on the same street. Local authorities may not cap the overall number of sidewalk vendors in their jurisdiction and may not restrict sidewalk vendors to a designated area, unless directly related to objective health, safety or welfare concerns.

B. Current CMC Chapter 8.32

The city’s current ordinance pertaining to street and sidewalk vending, codified in CMC chapter 8.32, contains a patchwork of solicitation and food truck guidelines. This chapter is in violation of SB 946 for two reasons. First, it explicitly bans street and sidewalk vending throughout the city, with limited exceptions for activities such as special events. Second, the code does not contain a permitting system for sidewalk vending. Thus, as of January 1, 2019, the city is unable to regulate sidewalk vending unless a revised ordinance with measured time, place and manner restrictions, along with a permitting or licensing program, is adopted.

With regard to food truck vending, CMC section 8.32.010 currently allows food truck vendors to operate for 10 minutes in any one place in most areas of the city. Food truck vendors must obtain a permit to lawfully operate in the city. Ice cream trucks are subject to additional regulations.

C. Proposed New Chapter 8.32

Similar to the intent of the State Legislature, the proposed local ordinance recognizes that sidewalk and street vending provide important entrepreneurship and economic development opportunities to low-income and immigrant communities, contribute to a dynamic public space and increase access to desired goods and culturally significant food and merchandise. At the same time, the ordinance carves out certain exceptions to the deregulation of sidewalk vendors in order to protect the health, safety and welfare of the public and the use and enjoyment of public spaces, natural resources and recreational opportunities within the city.

Using surrounding cities' street vending ordinances as a model, this proposed ordinance incorporates many available exceptions permitted by SB 946 to provide broad power to regulate and control vending. Sensitive areas such as intersections, schools, beaches and parks contain time, place and manner restrictions on vending due to health, safety, welfare and environmental concerns.

The ordinance defines "sidewalk vendor" as "a person who vends food or merchandise using nonmotorized vending equipment or from one's person, upon a public sidewalk or other pedestrian path." "Food truck vendor" is defined as "a person who vends food or beverages using a food truck." "Food truck" means "a motorized vehicle specifically equipped for the sale of food or beverages used for vending purposes." The ordinance will not regulate services, as was the case with existing CMC chapter 8.32.

Structurally, the proposed ordinance repeals CMC chapter 8.32 and replaces it with comprehensive regulations for both sidewalk and food truck vendors. Although SB 946 does not require a city to allow food truck vending, the proposed new chapter continues to allow this activity and creates a single set of regulations that apply to both sidewalk and food truck vendors. The heart of the ordinance is the requirement of a vending equipment permit for any conveyance used for vending purposes (e.g., food trucks, wagons, pushcarts, bikes, etc.). The ordinance also incorporates the city's current business licensing requirements, per CMC chapters 5.04 and 5.08.

The ordinance will not affect existing requirements of CMC section 11.32.030, which governs unlawful acts in the city's beaches and parks, including the issuance of park and facility use permits and special event permits required to sell or solicit food, merchandise or services at city parks and beaches (see e.g., CMC subsections 11.32.030(20), 11.32.030(21) and 11.32.030(28)). Parks will continue to issue permits related to the sale of food and merchandise for one-time or short-term events, such as birthday parties and the Oktoberfest celebration in Holiday Park.

Vending equipment permit applicants must provide proof of county and state food handler's cards/certifications, a description of proposed merchandise or food to be sold, areas of operation and the names and identities of all individuals involved in vending activities. A sample vendor permit application, to be attached as an addendum to the existing business license application, is attached as Exhibit 4. The Finance Department will be tasked with issuing and renewing business licenses (per the current protocol) and vending equipment permits. The Risk Manager must also review applications for compliance with insurance requirements. The Code

Enforcement Department will monitor vendors' business license and vending equipment permit compliance.

D. Comparison of Current and Proposed Vending Ordinance

<u>Current Section in CMC Chapter 8.32</u>	<u>Current Language</u>	<u>Revision Action</u>
<p><u>8.32.010 Display, sale or storage on public ways prohibited.</u></p>	<p><i>A. Except as otherwise provided in this chapter, no person shall display, sell or store any goods or merchandise from any temporary or permanent display, vehicle, wagon or pushcart upon any public street, alley, highway, parking lot, sidewalk or right-of-way.</i></p> <p><i>B. No person shall sell or offer to sell goods or merchandise from any temporary display, vehicle, wagon or pushcart in any commercial zone except as provided in Title 21. If permitted by the provisions of Title 21, a permanent structure, all or part of which is located on a public street, sidewalk, parking lot or easement, may be used for the sale of goods or merchandise, provided that all appropriate permits required by Titles 6, 11, 18 and 21 have been issued.</i></p> <p><i>C. No person shall sell or offer to sell goods, merchandise, food or beverages from any vehicle on any portion of any public street, alley, highway, parking lot, sidewalk, or right-of-way within one-half mile of a public school building or school grounds while children are going to or from the school, during opening or closing hours, or during a recess period.</i></p> <p><i>D. Subject to subsection C of this section, a person may display or sell food or beverages from a motor vehicle specifically equipped for display or sale of food or beverages, provided that the person has first obtained a permit required by this chapter. A person may stand or park such vehicles for the purpose of selling or offering to sell their food or beverages only at the request of a bona fide purchaser for a period of time not to exceed 10 minutes at any one place. If the person is displaying or selling food or beverages</i></p>	<p>Repealed.</p>

	<p><i>from an ice cream truck, the person must also comply with the provisions in Section 8.32.015 of this chapter.</i></p>	
<p><u>8.32.015</u> <u>Ice Cream</u> <u>Trucks</u></p>	<p><i>A. The city council finds and declares that motor vehicles engaged in vending ice cream and similar food items in residential neighborhoods can increase the danger to children, and it is necessary that these vehicles are clearly seen and noticed by motorists and pedestrians to protect public safety.</i></p> <p><i>B. As used in this section, the term “ice cream truck” means a motor vehicle engaged in the curbside vending or sale of frozen or refrigerated desserts, confections, or novelties commonly known as ice cream, or prepackaged candies, snack foods, or soft drinks, primarily intended for sale to children under 12 years of age.</i></p> <p><i>C. Any ice cream truck shall be equipped at all times while engaged in vending in a residential area with signs mounted on both the front and the rear and clearly legible from a distance of 100 feet under daylight conditions, incorporating the words “WARNING” and “CHILDREN CROSSING.” Each sign shall be at least 12 inches high by 48 inches wide, with letters of a dark color and at least four inches in height, a one-inch solid border, and a sharply contrasting background.</i></p> <p><i>D. A person may not vend from an ice cream truck that is stopped, parked, or standing on any public street, alley, highway, or public right-of-way under any of the following conditions:</i></p> <ol style="list-style-type: none"> <i>1. If the street, alley, highway, or public right-of-way has posted speed limit of greater than 25 miles per hour.</i> <i>2. If the street, alley, highway, or public right-of-way is within 100 feet of an intersection with an opposing street, alley, highway, or public right-of-way that has a posted speed limit greater than 25 miles per hour.</i> 	<p>All provisions integrated into proposed sections 8.32.090 and 8.32.100.</p>

	<p>3. <i>If the vendor does not have an unobstructed view for 200 feet in both directions along the street, alley, highway, or public right-of-way and of any traffic on the street, alley, highway, or public right-of-way.</i></p>	
<p><u>8.32.020</u> <u>Permits for Promotional Sales</u></p>	<p><i>The city manager may, from time to time, issue temporary permits providing for the holding of promotional sidewalk sales, subject to such restrictions as to length of time and other conditions as the city manager deems reasonably necessary for the public health, safety and welfare.</i></p>	<p>Language kept as-is under proposed section 8.32.140 "Sidewalk Sales."</p>
<p><u>8.32.030</u> <u>Street Fairs</u></p>	<p><i>The city manager may from time to time issue temporary permits for street fairs subject to such restrictions as to the length of time and other conditions as the city manager deems reasonably necessary for the public health, safety and welfare.</i></p>	<p>Language kept as-is under proposed section 8.32.150 "Street Fairs."</p>
<p><u>8.32.040</u> <u>Entering private property for the purpose of sale without permission.</u></p>	<p><i>No person shall go onto private property within the city for the purpose of selling, offering for sale or soliciting orders for the sale of any merchandise, product, service or thing whatsoever when the occupant of such property has given notice or warned such persons to keep away. A sign posted by the occupant of the property, with the words "no solicitors" or "no peddlers" or other similar words, at or near the front door or primary entrance to a residential structure on private property, shall constitute sufficient notice or warning pursuant to this section. For any property used for a purpose of other than a residential use such notice may be posted, at each public entrance to any structure on the property in any conspicuous location on the property, in such a manner so as to provide reasonable notice of the restriction.</i></p>	<p>Language kept as-is and moved to proposed new chapter 8.34 "Solicitation" (to be presented to the City Council in a separate ordinance package related to unlawful camping and associated activities).</p>
<p><u>8.32.050</u> <u>Restriction on Hours</u></p>	<p><i>No person shall go onto private property for the purposes of commercial or noncommercial peddling, soliciting, vending or canvassing before the hour of 8:00 a.m. or after the hour of 8:00 p.m., except that while the United States is on federally mandated daylight savings time the hours shall be 8:00 a.m. to 9:00 p.m.</i></p>	<p>Language kept substantially as-is except the term "vending" has been removed; section has been moved to proposed new chapter 8.34 "Solicitation" (to be presented to the City Council in a separate ordinance package related to unlawful camping and associated activities). "Vending" hours are now regulated by proposed section 8.32.070 "Sidewalk Vending"</p>

		Generally:" "Vending activities may occur between the hours of 8:00am and 10:00pm in industrial and commercial zoned areas and between the hours of 8:00am to sunset in all residential zoned areas."
<u>8.32.060 Business License Required</u>	<i>All persons engaged in the business of soliciting, peddling or vending subject to the provisions of this chapter shall obtain a business license pursuant to Chapters 5.04 and 5.08 of this code.</i>	Repealed and revised. New language contained in proposed section 8.32.010 "Vending Generally:" "Subject to the provisions of this chapter, every individual engaged in vending is required to acquire a business license from the City Manager or designee pursuant to chapters 5.04 and 5.08 of the Carlsbad Municipal Code prior to vending on any public street, sidewalk or right-of-way."

Fiscal Analysis

In-house costs to the city’s Code Enforcement and Finance Departments, including the Risk Manager, will be incurred in the administration and enforcement of the new permitting program. These costs will be partially offset by vendors’ business license and vending equipment permit fees. Current business license fees for mobile vendors are listed at a flat rate of \$80. The proposed permit fee can be established and modified as needed by council resolution. At this time, staff recommends no permit fee as per the policy used with analogous permits such as short-term vacation rentals.

While it is difficult to predict how this ordinance will change the vending landscape in Carlsbad, staff anticipates that many sidewalk vendors and food truck vendors will begin to operate throughout the city without the required vending equipment permit or license. Staff has concerns that the Code Enforcement Department will not have the manpower to effectively and fairly enforce the proposed ordinance. Staff may return to Council at a later date should there be a demonstrated need to hire additional Code Enforcement staff.

Next Steps

Upon adoption of this proposed ordinance or an amended version thereof, the city could legally regulate sidewalk and food truck vendors through a new permitting program and the city’s existing business licensing program. The City Attorney’s Office will train Finance Department staff on the review and processing of vending equipment permit applications, as well as the administration of the permitting program. The City Attorney’s Office will also train Code Enforcement staff and Parks staff on the new vending requirements and enforcement guidelines. Staff will create a map that depicts the allowable sidewalk and food truck vending areas

throughout the city. The Code Enforcement Department will also continue to research alternative citation systems to easily and quickly cite violators, such as a mobile device with mobile printing capabilities or carbon copy citation books.

Environmental Evaluation (CEQA)

CEQA requires analysis of agency approvals of discretionary “projects.” A “project” is defined under CEQA as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations (the CEQA Guidelines) describes the general rule that CEQA only applies to projects which “have the potential for causing a significant effect on the environment; where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

Staff opines that the new chapter 8.32 created by this proposed ordinance should be categorically exempt from environmental review pursuant to CEQA Guidelines section 15061(b)(3). While actions under the proposed regulations may be classified as “projects” under CEQA, nothing in this new chapter or its implementation, either individually and cumulatively, would foreseeably have any significant effect on the environment. The proposed ordinance contains a provision for council to make this required finding (see Exhibit 1, section 8.32.010(B) “Purpose and Findings”).

Public Notification

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to the scheduled meeting date.

Exhibits

1. Ordinance to repeal and replace chapter 8.32 to authorize a sidewalk and food truck vending equipment permit program in compliance with California SB 946
2. Strikeout of current chapter 8.32
3. Underlined version of new chapter 8.32
4. Sample vending addendum to be added to existing business license application
5. Bill Text—Senate Bill 946 “Sidewalk Vendors”