

REPORT TO THE CITY COUNCIL



DATE: February 19, 2019

TITLE: An Ordinance Related to Pushcart Vendors, Foot Vendors and Peddlers

Prepared by: Jennifer Mizrahi, City Attorney

RECOMMENDATION

- 1) Staff Report;
- 2) Entertain questions of Staff from the City Council;
- 3) Open the Public Hearing;
- 4) Take testimony from those in favor;
- 5) Take testimony from those opposed;
- 6) Take testimony from those in a neutral position;
- 7) Close the Public Hearing;
- 8) City Council discussion and questions to Staff; and
- 9) Introduce for First Reading and read by title only: "An Ordinance of the City Council of the City of Desert Hot Springs, California, amending Chapter 5.28 "Pushcart Vendors, Foot Vendors and Peddlers" of Title 5 "Business Licenses and Regulations" and Section 10.16.090 "Parking by Peddlers and Vendors-Permits" of Chapter 10.16 "Stopping, Standing, and Parking" of Title 10 "Vehicles and Traffic" of the Desert Hot Springs Municipal Code."

BACKGROUND

Chapter 5.28 of the Desert Hot Springs Municipal Code ("DHSMC") regulates pushcart vendors, foot vendors, and peddlers. Currently, Chapter 5.28 prohibits pushcart and foot vendors from vending on any street or sidewalk within the City. Peddlers are allowed to operate subject to regulations.

Under Chapter 5.28, foot vendors are defined as any person selling "any food, food products, goods, wares, merchandise, or other nonfood items which are carried on his or her person in a basket, backpack, box or other device or container used to carry goods." (Section 5.28.020). Pushcart vendors are defined as "any person selling, intending to sell, displaying or soliciting any food, food products, goods, wares, merchandise or other nonfood items from a pushcart." (Section 5.28.020).

On September 17, 2018, California passed Senate Bill 946 ("SB 946"). SB 946 (Government Code Sections 51036-51039) took effect on January 1, 2019, and limits the ability of local jurisdictions, including charter cities, to regulate sidewalk vending except as outlined in the bill.

Under SB 946, sidewalk vendors are defined as any 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." (Government Code Sect. 51036(a)). SB 946 further allows sidewalk vendors to sell their food or merchandise on public sidewalks, pedestrian paths, and city parks. Local authorities cannot "cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards" of SB 946. (Government Code Sect. 51039(e)).

As currently written, Chapter 5.28 of the DHSMC is inconsistent with SB 946 with respect to sidewalk vendors. Although Chapter 5.28 refers to foot and pushcart vendors, these terms are clearly encompassed within the broad definition of "sidewalk vendors" under SB 946. The result

is that the City may not cite, fine, or prosecute sidewalk vendors under Chapter 5.28 as presently drafted. SB 946 does not affect peddlers, who operate door-to-door rather than on sidewalks.

The City has two choices with respect to sidewalk vendors in light of SB 946. The City may do nothing, and allow sidewalk vendors to operate freely. Another option is to enact new regulations on sidewalk vendors to the extent allowed by SB 946.

The proposed ordinance seeks to regulate sidewalk vendors. The goal is to protect the health and safety of the public and provide oversight of sidewalk vendors.

DISCUSSION

The proposed ordinance seeks to install a regulatory system for sidewalk vendors that complies with SB 946. Among its principal features include a permitting process, distance requirements from certain places, and administrative fines and appeals.

Under the proposed ordinance, every sidewalk vendor must obtain a permit prior to operating within the City. The permit application requires contact information, description of food or merchandise, hours and locations of operation, copy of a valid seller's permit issued by the California Department of Tax and Fee Administration, and other information. A driver's license or tax identification number is required, but such information is confidential and not subject to the Public Records Act. The City has thirty days to review the application. The City's decision is subject to an administrative appeal.

The general operating requirements are meant to be time, place, and manner regulations for all sidewalk vendors. In general, sidewalk vendors may not obstruct the public right of way or emergency responders. Their hours of operation are the same as the business on the same street. Particular distance requirements include 50 feet from any school crossings, crosswalks, and senior center. The intent is to protect pedestrians, senior citizens, students, and vendors from dangers that may be caused by obstructing view or blocking access to portions of the sidewalks where persons are most vulnerable. Further, the distance requirements will reduce distractions and ease congestions to mitigate any traffic hazards.

One major restriction in the proposed ordinance is to prohibit sidewalk vendors from operating on Palm Drive, between Two Bunch Palms Trail and Camino Aventura. The City recently designated this stretch of Palm Drive a "safety corridor" in light of the unique circumstances of this street. Due to frequent speeding, fewer crosswalks, and other conditions, this corridor has seen many fatal collisions. In order to mitigate traffic hazards, the safety enhancement zone doubles fines for traffic violations. The City has also deployed a traffic officer to monitor this corridor. While these efforts are producing positive results, allowing sidewalk vendors to congregate along this corridor may interfere with the City's goal of increasing traffic safety. City inspectors have observed that since the passage of SB 946, an increasing number of sidewalk vendors are already operating along the narrow sidewalks of Palm Drive, obstructing the right of way. The congestion of sidewalk vendors in the busiest corridor of the City would also distract drivers and pedestrians. As such, City staff recommends that no sidewalk vendors be allowed to operate on Palm Drive between Two Bunch Palms Trail and Camino Aventura.

The proposed ordinance would restrict stationary sidewalk vendors for parks in which the City has an exclusive agreement with a concessionaire for the sale of food or merchandise. For all other parks, sidewalk vendors may not interfere with recreational activities or persons in a playground, nor can they approach spectators of a recreational activity. SB 946 allows park regulations that protect the "public's use and enjoyment of natural resources and recreational opportunities." (Government Code Sect. 51038(b)(2)(B)(ii)).

In addressing penalties, the proposed ordinance complies with SB 946 by removing all criminal penalties for sidewalk vending violations. Instead, sidewalk vendors are subject to administrative fines, which can be appealed to an administrative hearing officer. Additionally, the fourth or subsequent violation in a single year can result in the immediate revocation of the sidewalk vendor's permit. Such revocation may be stayed during appeal.

Lastly, the proposed ordinance largely leaves the peddler regulations intact. Since SB 946 does not address peddler regulations, any peddler provisions of Chapter 5.28 may be left unchanged.

By requiring permits and conditions of operation on vending in sidewalks and parks, the City can oversee sidewalk vendors and prohibit acts which would endanger the public health and safety.

FISCAL IMPACT

None.

EXHIBITS

- 1) SB 946
- 2) Ordinance