

A Golden Opportunity for the Golden State

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Introduction

Sidewalk vendors are a fixture of many public spaces in cities across California and the United States. Friends to the harried urban dweller in need of a quick lunch and to the tourist in search of the perfect souvenir, vendors sell a variety of food and merchandise from their carts or tables—everything from bacon-wrapped hot dogs and ice cream to clothing and flowers. Some even offer services such as shoe shines.

Vending is hard work, and in too many California cities, the government makes it harder, burdening vendors with rules that often frustrate and discriminate against them without furthering any real public health or safety goal.¹ Now, with the Senate’s passage of SB 946, the California State Legislature is poised to help make life easier for sidewalk vendors across the state. SB 946 would protect the rights of these entrepreneurs by providing a framework within which cities can promulgate sidewalk vending regulations that create a pathway to entrepreneurship, instead of erecting arbitrary and anticompetitive barriers that bear no relationship to protecting the public’s health and safety. Specifically, SB 946 would require that local sidewalk vending regulations—including limitations on where, when or how vendors can operate—be directly related to objective health, safety or welfare concerns.²

But what would reforms necessitated by SB 946 look like? To find out, the Institute for Justice reviewed the sidewalk vending codes of a random sample of 20 cities. We learned that all 20 cities currently fall short of two or more of the substantive protections offered to vendors by SB 946. Put differently, all 20 cities place arbitrary and anticompetitive restrictions on vendors—up to and including outright bans. SB 946 would offer vending entrepreneurs relief from these restrictions while maintaining rules that protect the public’s health and safety.

What Vendors Bring to the Table

SB 946 seeks to reduce arbitrary and anticompetitive restrictions on sidewalk vending in recognition of the industry’s importance—not just to vendors themselves but to the communities in which they operate—and in response to the overwhelming burdens so many vendors face across the state. Sidewalk vending, it notes, provides “important entrepreneurship and economic development opportunities” to lower-income and immigrant workers, increases access to goods

including “culturally significant food and merchandise,” and helps foster “a safe and dynamic public space.”³

These findings rest on solid ground. A 2015 Institute for Justice study, *Upwardly Mobile: Street Vending and the American Dream*, which surveyed licensed street vendors across the 50 largest U.S. cities, found that vending offers an accessible avenue to entrepreneurship for members of several disadvantaged groups. Over half (51%) of street vendors are immigrants, almost two-thirds (62%) are persons of color, and almost one-third (28%) have less than a high school education. The survey further revealed that street vendors are hard-working business owners and job creators: Nearly all (96%) own their businesses, and more than one-third (39%) are employers, averaging 2.3 full-time and 2.7 part-time workers. And, though most are small, vending businesses together make sizable contributions to local economies. For example, in 2012 alone street vendors’ contributions to New York City’s economy totaled an estimated 17,960 jobs, \$192.3 million in wages and \$292.7 million in “value added.”⁴ Vendors also contributed an estimated \$71.2 million to local, state and federal tax coffers.⁵

California cities, too, reap benefits from vendors. A 2015 Economic Roundtable study of the economic and geographic impacts of sidewalk vendors in Los Angeles found that, through their spending, L.A.’s estimated 50,000 sidewalk vendors generate \$517 million in economic stimulus, most of which stays in the local economy, and sustain 5,234 local jobs. The same study also found that sidewalk vendors can complement brick-and-mortar businesses and help make the streets safer. It concluded, across three neighborhood case studies, that traditional retail stores and restaurants “were more likely to experience job growth when street vendors were operating nearby” and the presence of vendors was “associated with less frequent rather than more frequent incidents of crime.”⁶

Making these contributions all the more remarkable is the fact that sidewalk vending was, when the study was conducted, illegal in the City of Angels. Technically, it still is.⁷ After voting to decriminalize vending in February 2017, the Los Angeles City Council voted in April 2018 to legalize and regulate it.⁸ But until a new vending ordinance is drafted and approved, vendors remain in limbo. Moreover, a very real danger exists that the eventual ordinance will be rife with anticompetitive provisions that further no legitimate interest and instead only make it unnecessarily difficult for these entrepreneurs to operate.⁹

SB 946 would protect vendors from any such provisions in Los Angeles and other cities across the Golden State by ensuring vending regulations serve legitimate public health and safety concerns, not anticompetitive private interests. It would not be the first time the state stepped in when cities failed to do the right thing. Los Angeles’ experience with food trucks is illustrative.

Los Angeles’ food truck scene is legal, flourishing and world famous,¹⁰ but it might not exist at all absent a state law similar to SB 946. In 2006 the L.A. City Council adopted an ordinance requiring food trucks to move every 30 or 60 minutes depending on whether they were in a

residential or commercial area.¹¹ Such “duration restrictions” make it virtually impossible to operate a truck offering food cooked to order. Aside from the challenges of finding multiple suitable locations and alerting customers, such trucks—effectively kitchens on wheels—are not as mobile as one might think. Before moving locations, a food truck operator who cooks onboard might have to perform any number of tasks, such as cooling hot oil, dumping waste water or packing away equipment. Having to do all of that every 30 or 60 minutes is an insurmountable obstacle.¹²

Tired of being ticketed, one food truck operator teamed up with the UCLA law school’s clinical program to sue the city over its duration restriction—and won. In 2009 a state court commissioner invalidated Los Angeles’ food truck ordinance because it conflicted with the California Vehicle Code, which permits cities to regulate vehicle vendors only “for the public safety.” A similar duration restriction in the Los Angeles County code had already met the same fate.¹³ Los Angeles still regulates food trucks, but the laws it has in place are generally narrowly tailored to deal with actual health and safety issues.¹⁴ Today Los Angeles is held up as a model city when it comes to food truck regulation.¹⁵

If SB 946 passes, Los Angeles and other cities across California have the potential to become exemplars for sidewalk vending regulation—and destinations for street (and sidewalk) food as well. After all, L.A. alone is already home to tens of thousands of sidewalk vendors, about 10,000 of whom sell food.¹⁶ Legalizing sidewalk vending—and reducing the regulatory burden on sidewalk vendors across the state—will help bring these entrepreneurs out of the shadows and into the formal economy where it will be easier to ensure that they comply with all appropriate health, safety and tax requirements.

Methods

To estimate the impacts of SB 946, the Institute for Justice created a stratified random sample of 20 cities¹⁷ from a list of all California cities obtained from the U.S. Census Bureau. These cities were stratified according to population size since the economies of larger cities are often different from those of smaller ones.¹⁸ The random sample also ensures geographic diversity. We reviewed the sidewalk vending codes for the 20 cities in our sample to determine whether and how they fall short of SB 946’s protections.¹⁹

Results

Our survey of the 20 sample cities’ vending codes turned up six types of restrictions on vending that would not be allowed under SB 946: 1) location-based restrictions that protect brick-and-mortar businesses from competition, 2) different limits on hours of operation than for other businesses, 3) requirements that vendors seek approval from a private party before operating in a given area, 4) limits on the number of vending permits, 5) prohibitions on vending in designated areas and 6) prohibitions on vending in public parks. We also found that four cities in the sample have either explicit or effective bans on sidewalk vending.²⁰ Since these cities would have to

avoid the above pitfalls in bringing their codes into compliance with SB 946, we have counted them as having all six of the offending rules.

As shown in Table 1, all 20 cities in our sample restrict vending in two or more ways that SB 946 would not allow. On average, cities fall short of SB 946’s protections in 3.5 ways.

Table 1. Percentage of Cities That Would Need to Extend Greater Protections to Vendors Under SB 946

Restrictions not allowed under SB 946*	% cities
Anticompetitive location-based restrictions**	75%
Different limits on hours of operation than for other businesses	65%
Requirements that vendors seek approval from a private party before operating in a given area	35%
Limits on the number of vending permits	30%
Prohibitions on vending in designated areas	50%
Prohibitions on vending in public parks	90%
Mean number of restrictions per city	3.5
% cities with at least one restriction	100%
<p>* Four cities with explicit or effective bans on sidewalk vending have been counted as having each of the six rule types below.</p> <p>** Beyond the four aforementioned cities’ vending bans, this category includes six cities’ prohibitions on vending within a certain distance of brick-and-mortar businesses and five cities’ severe duration restrictions.</p>	

One of the most common ways in which cities fall short of the protections offered by SB 946 is also one of the worst. SB 946 would protect vendors in 15 of the 20 cities in our sample (75%) from location-based restrictions that plainly put vendors at a competitive disadvantage vis-à-vis brick-and-mortar businesses. These rules may take the form of either “proximity bans,” where cities bar sidewalk vendors from operating within a certain distance of brick-and-mortar businesses, or severe duration restrictions, where cities put extremely short limits on how long vendors can stay in a single spot. Such restrictions critically hamper vendors’ ability to work by

making it difficult, if not impossible, for vendors to find a place to operate or forcing them to move again soon after they do. Worse, they bear no link to public health or safety.

Also quite common, as well as blatantly protectionist and lacking a clear link to public welfare, are rules requiring vendors to observe different hours of operation than other businesses. In our sample, 13 cities (65%) either impose or would have to avoid such rules, which often hinder vendors' competitiveness by preventing them from operating during the prime shopping hours of early evening when many people are getting off work.

SB 946 would also protect vendors from a third plainly anticompetitive rule in seven (35%) cities in our sample: requirements that vendors seek approval from a private party—usually adjacent or nearby property owners, which are often businesses—before operating in a given area. Such requirements often put vendors in the position of needing to secure permission from their brick-and-mortar competitors—a high hurdle to overcome.

The remaining three protections offered by SB 946 would affect vendors in several cities in our sample: prohibitions on vending in public parks, 18 cities (90%); prohibitions on vending in other designated areas, usually residential zones, 10 (50%); and caps on the number of vending permits, six (30%).

Should SB 946 become law, vendors would have new protections from arbitrary and anticompetitive rules like these in the cities in our sample and others like them. Sidewalk vending would not, however, be left unregulated. Our survey of 20 cities' vending codes revealed that the 16 cities that permit vending already contain rules to protect the public welfare.²¹

For instance, with respect to food vendors, these 16 cities all have some type of regulation to uphold food safety and hygiene standards, in most cases including a health permit requirement. Such rules would continue to be perfectly legitimate under SB 946. And there is every reason to believe that they are already working as intended, to protect the public. A 2014 Institute for Justice study of seven U.S. cities (including Los Angeles) in which mobile vendors are covered by the same health codes and inspection regimes as brick-and-mortar businesses found that food trucks and carts did as well as or better than restaurants on sanitation. In six of the seven cities, food trucks and carts actually averaged fewer violations than their brick-and-mortar counterparts. (In the seventh, Seattle, they performed about the same.)²²

Under SB 946, California cities would also remain free to regulate sidewalk vendors for other legitimate public concerns, such as trash and congestion, just as they are free to regulate food trucks under the state's vehicle code. A great example of this comes from Santa Monica. Concerned that food trucks might create visibility problems and lead to automobile accidents with inebriated late-night patrons of bars along a half-mile stretch of Main Street, Santa Monica officials did not ban food trucks from operating at night altogether. Instead, they created a narrow rule to target their specific concern: Food trucks were barred from operating along that

stretch on Friday and Saturday nights from 1 to 3 a.m. but could continue to operate on nearby side streets.²³ Where sidewalk congestion from vending poses a legitimate hazard, SB 946 would allow cities to take steps to mitigate it.

Conclusion

California's sidewalk vendors face a patchwork of arbitrary and anticompetitive rules that make it difficult—or even impossible—to ply their chosen trade and share in the prosperity of the United States' largest economy. With SB 946, California has the opportunity to remove these substantial barriers to employment and entrepreneurship and help thousands of residents on the lower rungs of the economic ladder. And, as our study shows, the state can slash this red tape without sacrificing public health and safety.

¹ A 2011 Institute for Justice Report cataloguing common vending regulations in the 50 largest U.S. cities—a list in which California is well represented—found that nearly all of the cities had erected major impediments to vending. Norman, E., Frommer, R., Gall, B., & Knepper, L. (2011). *Streets of dreams: How cities can create economic opportunity by knocking down protectionist barriers to street vending*. Arlington, VA: Institute for Justice.

<http://ij.org/report/streets-of-dreams/>

² SB-946, 2018 Leg., 2017–18 Sess. (Cal. 2018), available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB946. In addition to barring restrictions on sidewalk vending not necessary to protect the public, SB 946 would prohibit criminal penalties for violations of vending ordinances or regulations. Instead, violations would be punishable only by standardized administrative fines subject to an ability-to-pay determination.

³ *Id.*

⁴ Value added, similar to gross domestic product, measures the value businesses create beyond the raw or intermediate goods they purchase.

⁵ Carpenter, D. M. (2015). *Upwardly mobile: Street vending and the American dream*. Arlington, VA: Institute for Justice. <http://ij.org/report/upwardly-mobile/>. It should be noted that the study did not differentiate between sidewalk vendors and other types of street vendors, such as food truck operators.

⁶ Liu, Y. Y., Burns, P., & Flaming, D. (2015). *Sidewalk stimulus: Economic and geographic impact of Los Angeles street vendors*. Los Angeles: Economic Roundtable. <https://economicrt.org/publication/sidewalk-stimulus/>, pp. 13, 18.

⁷ L.A. Mun. Code § 42.00, available at

<http://sidewalkvending.lacity.org/PDF/English/Municipal%20Code%20Sections%2042.00B.pdf>. The Economic Roundtable estimates that if L.A. were to legalize vending, and bring vendors into the formal economy, vendors could contribute even more—including as much as \$33 million in tax on their sales. Liu et al., 2015. Although L.A. vendors do not—and cannot—currently collect sales tax, they do pay up to \$91 million in other taxes.

⁸ *Motion, Economic Development Committee Report and Amending Motion 17-C*, Council File No. 13-1493, City of L.A. (Apr. 17, 2018), http://clkrep.lacity.org/onlinedocs/2013/13-1493_CA_04-18-2018.pdf; Bronson-Potts, H. (2017, February 15). L.A. City Council votes unanimously to decriminalize street vending. *Los Angeles Times*.

<http://www.latimes.com/local/lanow/la-me-ln-street-vending-20170215-story.html>; Alpert Reyes, E. (2017, October 4). Sidewalk vending isn't supposed to be a crime anymore in L.A., but activists say vendors are still at risk. *Los Angeles Times*. <http://www.latimes.com/local/lanow/la-me-ln-street-vending-loop-hole-20170920-story.html>;

Berestein Rojas, L. (2018, April 17). LA street vending moves ahead. Here's what you need to know. 89.3 KPCC. <https://www.scpr.org/news/2018/04/17/82342/la-street-vendor-regulation-plan-approved-by-council/>

⁹ See, e.g., Alpert Reyes, E. (2018, April 17). L.A. shops would get voice, not veto, in sidewalk vending. *Los Angeles Times*. <http://www.latimes.com/local/lanow/la-me-ln-vending-rules-20180416-story.html>; Simón, Y. (2018, April 20). LA is legalizing street vending, but vendors are still fighting for their rights. *Remezcla*. <http://remezcla.com/culture/street-vending-legalized-los-angeles-vendors/>

¹⁰ Porpora, K. (2014, May 8). Sorry, New York: Los Angeles is the new food capital. *Yahoo*. <https://www.yahoo.com/lifestyle/sorry-new-york-los-angeles-is-the-new-food-capital-85068605142.html>

¹¹ L.A. Mun. Code § 80.73(b)(2)(F).

¹² Norman et al., 2011.

¹³ Willon, P. (2009, June 11). L.A. taco trucks can stay parked for business. *Los Angeles Times*. <http://articles.latimes.com/2009/jun/11/local/me-tacotrucks11>; *Gonzalez v. City of Los Angeles Dep't of Transp.*, No. 09K08485 (L.A. Cty. Super. Ct. June 10, 2009) (order reversing administrative decision); Cal. Veh. Code § 22455 (2018), available at http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH§ionNum=22455

¹⁴ In another example of states reducing arbitrary and anticompetitive local restrictions on vending, Arizona recently passed a law preventing cities from banning food trucks or creating red tape that makes it difficult for them to operate. Among the types of red tape that will no longer be allowed are restrictions that stop food trucks from parking in legal public parking spaces, that force trucks to leave private lots after an arbitrarily short period and that prohibit trucks from operating within a certain distance of brick-and-mortar restaurants. Wimer, A. (2018, May 15). Arizona governor signs law freeing food trucks to operate across the state [Press release]. Arlington, VA: Institute for Justice. <http://ij.org/press-release/arizona-governor-signs-law-freeing-food-trucks-to-operate-across-the-state/>

¹⁵ Frommer, R., & Gall, B. (2012). *Food truck freedom: How to build better food-truck laws in your city*. Arlington, VA: Institute for Justice. <http://ij.org/wp-content/uploads/2015/03/foodtruckfreedom.pdf>

¹⁶ Tso, S. M. (2014). *City of Los Angeles sidewalk vending status report* [Report of the Chief Legislative Analyst]. http://clkrep.lacity.org/onlinedocs/2013/13-1493_rpt_cla_11-26-14.pdf

¹⁷ Bakersfield, Riverside, Oxnard, Jurupa Valley, Hesperia, Milpitas, Yorba Linda, Santa Cruz, Cupertino, Lake Elsinore, Delano, West Sacramento, Glendora, Poway, Cypress, Stanton, La Verne, Selma, Livingston, Carpinteria.

¹⁸ While the cities were chosen at random, cities in the lowest quintile by size were dropped from the population and so are excluded from our sample.

¹⁹ In the case of one city, Poway, we also took into account one restriction that does not appear in the city's vending code. Poway's website mentions that the city does not allow vending in public parks. A city representative confirmed Poway enforces this extralegal restriction. It is possible that other cities have similar extralegal restrictions on sidewalk vending of which we are unaware.

²⁰ Hesperia, Delano and Stanton ban sidewalk vending outright; Glendora effectively bans sidewalk vending through a ban on the use of pushcarts.

²¹ The remaining four cities do not have public health and safety regulations specific to sidewalk vending because they ban the practice.

²² Erickson, A. C. (2015). Food safety risk of food trucks compared with restaurants. *Food Protection Trends*, 35(45), 348–56; Erickson, A. C. (2014). *Street eats, safe eats: How food trucks and carts stack up to restaurants on sanitation*. Arlington, VA: Institute for Justice. <http://ij.org/report/street-eats-safe-eats/>

²³ Islas, J. (2011, November 10). Santa Monica bans late-night food trucks on Main Street. *The LookOut*. https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2011/November-2011/11_10_11_Santa_Monica_Bans_Late_Night_Food_Trucks_on_Main_Street.html