



**SENT VIA EMAIL & PERSONAL DELIVERY**

**November 1, 2022**

Honorable Mayor Eric Garcetti and Members of the City Council  
City of Los Angeles  
200 N Spring St  
Los Angeles, CA 90012

BY \_\_\_\_\_  
CITY CLERK  
2022 NOV - 2 AM 10: 05  
CITY CLERK'S OFFICE

**Re: Unlawful Regulation and Prohibition of Sidewalk Vending in the City of Los Angeles**

Dear Honorable Mayor Garcetti and Members of the City Council:

Public Counsel and Arnold & Porter Kaye Scholer LLP (“Arnold & Porter”) write on behalf of Community Power Collective, East LA Community Corporation, and Inclusive Action for the City, as well as other community partners, with respect to certain provisions of the City of Los Angeles’ (“City” or “Los Angeles”) Ordinance No. 185900 (the “Sidewalk Vending Ordinance” or “Ordinance”) that fail to comply with California Government Code §§ 51036 *et. seq.* (hereby referred to as the “Safe Sidewalk Vending Act” or “SB-946”). In particular, the City’s enactment, implementation, and ongoing enforcement of the Ordinance’s provisions and accompanying regulations that (i) establish and maintain “No-Vending Zones” covering large areas of City neighborhoods<sup>1</sup>, (ii) ban sidewalk vending within 500 feet of farmers markets and other temporary events (filming, parades, and street festivals)<sup>2</sup>, and (iii) require that street vendors remain within a “Vending Area” no more than five feet wide adjacent to the street and not “in front of any building”<sup>3</sup> (collectively, the “Unlawful Restrictions”) violate SB-946 and are unlawful, void, and unenforceable. We hereby respectfully demand that the City immediately cease enforcement of the Unlawful Restrictions against sidewalk vendors and implement the remedies detailed in this letter.

The named community partners have a demonstrated interest in preventing the injustices caused by the Unlawful Restrictions. Community Power Collective is a community organization that exists to build power with low-income tenants and workers through transformative organizing to win economic justice, community control of land and housing, and to propagate systems of cooperation in Boyle Heights and the greater Los Angeles region. East LA Community Corporation is a community organization that advocates for economic and social justice across Los Angeles by building grassroots leadership, developing affordable housing and neighborhood assets, and providing access to economic development opportunities for low- and moderate-income families. Inclusive Action for the City is a community development organization whose mission is to bring people together to build strong, local economies that uplift low-income urban communities through advocacy and transformative economic development initiatives.

<sup>1</sup> Los Angeles Municipal Code (“LAMC”) § 42.13(C)(2)(b).

<sup>2</sup> LAMC § 42.13(C)(2)(a).

<sup>3</sup> City of Los Angeles and Bureau of Street Services, City of Los Angeles Sidewalk Vending Rules, at 2, [http://streetsla.lacity.org/sites/default/files/sidewalk\\_vending\\_rules\\_english.pdf](http://streetsla.lacity.org/sites/default/files/sidewalk_vending_rules_english.pdf) (last visited October 27, 2022).

## **I. The City's Sidewalk Vending Ordinance, Rules and Regulations That Prohibit Sidewalk Vending in Certain Areas**

On November 30, 2018, the Mayor signed the Sidewalk Vending Ordinance following its approval by the City Council on November 28, 2018, thereby placing restrictions and limitations upon sidewalk vending within the City. The Ordinance flatly and unconditionally prohibits sidewalk vending within 500 feet of: (1) the Hollywood Walk of Fame, Universal Studios, and the El Pueblo de Los Angeles Historical Monument at all times; (2) Dodger Stadium, the Hollywood Bowl, the Staples Center/LA Live area and the LA Coliseum on events days only; (3) Venice Beach, where vending is “limited to First Amendment protected expressive activities;” and (4) “any other venue as determined by the Board of Public Works or Board of Recreation and Parks Commissioners.”<sup>4</sup> Subsequently, in the Rules and Regulations implementing these provisions, the Staples Center/LA Live area was elevated into a venue at which sidewalk vending is barred at all times, and the exclusion of sidewalk vendors from Dodger Stadium during event days was expanded to encompass all of Elysian Park.<sup>5</sup> The City refers to these areas, and the 500-foot buffer surrounding them, as “No-Vending Zones.”

In addition, the Sidewalk Vending Ordinance and accompanying Rules and Regulations prohibit sidewalk vendors from operating anywhere within 500 feet of farmers’ markets, swap meets and special temporarily permitted events (such as “filming, parades or outdoor concerts”).<sup>6</sup> The Rules and Regulations also require sidewalk vendors to operate only in a narrow “Vending Area” immediately adjacent to the street that is no wider than “[t]he smaller of 5 feet or 1/3 the depth of the existing sidewalk,” and state that “[n]o stationary vending allowed in front of any building.”<sup>7</sup>

Public records included in the legislative history of the Sidewalk Vending Ordinance demonstrate these restrictions and limitations do not comply with, and are preempted by, the State’s requirements set forth in SB-946. Indeed, they appear reactive to perceived animus held by certain stakeholders against such vendors, and designed as protectionist measures to insulate local brick-and-mortar business interests from the purported economic competition from sidewalk vendors, all in explicit violation of SB-946. These restrictions also infringe upon state constitutional guarantees of due process and equal protection.

## **II. The City's Enactment, Implementation, and Ongoing Enforcement of the No-Vending Zones and Other Restrictions that are Unlawful, Void, and Unenforceable.**

Some two months before the Ordinance was adopted, Governor Brown signed SB-946 into law.<sup>8</sup> Effective on January 1, 2019, SB-946 has barred local governments, including the City of Los Angeles, from regulating sidewalk vendors except in accordance with its provisions.<sup>9</sup> In addition to decriminalizing sidewalk vending across the State, SB-946 places express limits on local governments’ ability to regulate sidewalk vending, including through locally-imposed restrictions upon the geographic areas or portions of the public right-of-way in which vending is allowed. Under SB-946, local restrictions

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<sup>4</sup> LAMC § 42.13 C.2.(b).

<sup>5</sup> City of Los Angeles and Bureau of Street Services, *City of Los Angeles Sidewalk Vending Rules* (hereafter “Rules and Regulations”) at 1 ¶ 3, [http://streetsla.lacity.org/sites/default/files/sidewalk\\_vending\\_rules\\_english.pdf](http://streetsla.lacity.org/sites/default/files/sidewalk_vending_rules_english.pdf) (last visited October 27, 2022); LA City Recreation and Parks Vending Rules and Regulations Flyer (English)(1).pdf, at 1.

<sup>6</sup> LAMC § 42.13(C)(2)(a).

<sup>7</sup> Rules and Regulations at 2 & Diagram 3; *see also id.* at 1 ¶ 2 (“Carts not allowed near any . . . business . . .”).

<sup>8</sup> Cal. Gov’t Code § 51036 *et. seq.*

<sup>9</sup> Cal. Gov’t Code § 51037(a).

of this kind are prohibited unless they can be shown to be “directly” required to safeguard “objective health, safety, or welfare concerns.”<sup>10</sup>

Through this express statutory standard, SB-946 requires that any “health, safety, or welfare concern” offered by a local government to support vendor restrictions must be “objective” in nature — a term denoting known or observable circumstances or events — and must be “directly related” to the vendor conduct in question and the restrictions sought to be placed on that conduct. In addition, SB-946 makes clear that neither “perceived community animus” against sidewalk vendors nor “economic competition” between vendors and local merchants can “constitute an objective health, safety, or welfare concern” sufficient to justify local restrictions on vending.<sup>11</sup>

Los Angeles’ Sidewalk Vending Ordinance does not comply with these mandatory provisions of California’s state law. Neither the Sidewalk Vending Ordinance itself nor its legislative history demonstrate any “objective health, safety, or welfare concern” that is “directly related” to the Unlawful Restrictions. Nowhere does the record of the City’s adoption of the Ordinance identify any facts, data or documentation that could possibly satisfy SB-946’s statutory standard, and certainly not any genuine need for the drastic and far-reaching restrictions on vending imposed by the City’s Ordinance, including its myriad No-Vending Zones that blanket large swathes of the community.

Although the City Council, through a Council motion, expressly instructed the Chief Legislative Analyst and City Attorney to “prepare and present findings based on health, safety and welfare for the no-vending zones”<sup>12</sup>, no such findings were presented, or approved, by the Council. The lone acknowledgement of this essential statutory requirement is reflected in a single “Whereas” clause of the final Ordinance, stating in conclusory terms that street vending “within 500 feet of popular tourist attractions and concert and sports venues . . . impacts pedestrian, tourist and vendor safety due to overcrowding on sidewalks, which results in pedestrians walking in the streets.”<sup>13</sup> This generalized assertion is nowhere supported by any data, documentation, or analysis. There is nothing in the Council record identifying where, when, or to what extent “pedestrians walking in the street” had in fact been observed in the areas in question, nor is there any showing that any pedestrian encroachment into the streets in these areas was caused by sidewalk vendors as opposed to other conditions or causes. This complete lack of justification falls far short of satisfying SB-946’s statutory standard. Beyond the addition of this “Whereas” clause, the City Council record reveals no other steps taken to comply with SB-946’s requirements as applied to the Sidewalk Vending Ordinance provisions challenged here.

The absence of a direct relationship between any “objective health, safety or welfare concern” and the Unlawful Restrictions was made even more obvious when the City established and implemented its “LA Al Fresco” sidewalk dining program for restaurants and bars in 2020. The City adopted rules for this program that permit brick-and-mortar restaurants to set up **permanent** sidewalk dining infrastructure on City sidewalks and streets. The City’s Al Fresco program has been implemented in areas like Hollywood Boulevard, wherein restaurants may set up tables and chairs in the No-Vending

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<sup>10</sup> Cal. Gov’t Code § 51038.

<sup>11</sup> Cal. Gov’t Code § 51038(e) (“For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.”).

<sup>12</sup> Report from Economic Development, Public Works and Gang Reduction, Arts, Entertainment, Parks and River Committees, Los Angeles City Council File 13-1493-S5 (Oct. 23, 2018), [https://clkrep.lacity.org/online/docs/2013/13-1493-S5\\_rpt\\_pwgr\\_10-17-18sig.pdf](https://clkrep.lacity.org/online/docs/2013/13-1493-S5_rpt_pwgr_10-17-18sig.pdf), as approved by Council Action, Los Angeles City Council File 13-1493-S5 (Nov. 2, 2018), [https://clkrep.lacity.org/online/docs/2013/13-1493-S5\\_CAF\\_11-02-2018.pdf](https://clkrep.lacity.org/online/docs/2013/13-1493-S5_CAF_11-02-2018.pdf)).

<sup>13</sup> Final Ordinance No. 185900, Los Angeles City Council File 13-1493-S5 (Nov. 28, 2020), [https://clkrep.lacity.org/online/docs/2013/13-1493-S5\\_ORD\\_185900\\_12-06-2018.pdf](https://clkrep.lacity.org/online/docs/2013/13-1493-S5_ORD_185900_12-06-2018.pdf).

Zone as long as they remain at least 18 inches from any star on the Hollywood Walk of Fame.<sup>14</sup> This establishes a grossly discriminatory status quo: vendors must remain 500 feet from the main tourist attraction along Hollywood Boulevard while brick-and-mortar restaurants are authorized and encouraged to occupy much of the sidewalk within this area with tables, chairs, heating lamps, and other equipment. Categorically banning all sidewalk vending within 500 feet of the Walk of Fame while expressly permitting much more extensive — and obstructive — brick-and-mortar sidewalk dining infrastructure in the same location vitiates any argument that the City’s No-Vending Zones for sidewalk vending were in fact justified by “overcrowding on sidewalks,” or any other genuine health, safety or welfare concerns.

Similarly, the City never considered or adopted any findings to justify an arbitrary ban on sidewalk vending within 500 feet of farmers’ markets, swap meets, and special temporarily permitted events. SB-946 permits local jurisdictions to “prohibit sidewalk vendors” in connection with these temporary events, but only “within the **immediate vicinity**” of the event itself (emphasis added).<sup>15</sup> The legislative history of the Ordinance and accompanying Rules and Regulations contain no analysis or facts that could justify the City’s far-reaching 500-foot restriction, which extends far beyond anything that could reasonably be considered the “immediate vicinity” of the event. Nor did the City ever consider or adopt any findings to justify limiting sidewalk vendors to a narrow “Vending Area” adjacent to the street and not in front of any building.

In addition to violating SB-946, the City’s differential treatment of sidewalk vendors as compared to brick-and-mortar businesses represents a substantial infringement upon California constitutional guarantees of due process and equal protection under the law. *See* Cal. Const. art. I, § 7(a). Street vendors and brick and mortar businesses are entitled to fair and equal opportunities to utilize the City’s sidewalks and the public right-of-way in their businesses, a fact emphasized by SB-946’s prohibition of local government restrictions on sidewalk vending motivated to shield local businesses from economic competition from vendors. As such, the unequal treatment of street vendors under the City’s Ordinance cannot be justified under California constitutional guarantees.<sup>16</sup>

### **III. The City’s Enactment, Implementation, and Ongoing Enforcement of the No-Vending Zones and Other Restrictions Significantly Harms Low-Income Sidewalk Vendors.**

The City’s Ordinance has effectively banned sidewalk vendors from many of the City’s most vibrant and lucrative retail venues, negatively impacting the livelihood of vendors who otherwise would contribute to the local small business economy. In many of these areas, such as the Hollywood Walk of Fame, there has been a rich history of sidewalk vending. After adoption of the City’s Ordinance, street vendors have experienced an increasing level of aggressive enforcement by StreetsLA (the City agency in charge of enforcing the Sidewalk Vending Ordinance) under the guise of enforcing its No-Vending Zones. Vendors also report other harassing tactics by StreetsLA officers, including writing tickets and

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<sup>14</sup> *City of Los Angeles Bureau of Engineering Permit Manual*, “Revocable ‘R’ Permits - Technical Procedures - 02 - Sidewalk Dining,” <https://engpermitmanual.lacity.org/revocable-r-permits/technical-procedures/02-sidewalk-dining> (last visited October 27, 2022).

<sup>15</sup> Cal. Gov’t Code § 51038(d) (emphasis added). In addition, SB-946 further limits any exclusion relating to such temporary events to only the “limited operating hours” or “limited duration” of the events, important limiting language that the City’s Ordinance ignores. *Id.* Bringing the City’s Ordinance into compliance with SB-946 on this issue as well is essential.

<sup>16</sup> *See, e.g., Cooley v. Superior Ct.*, 29 Cal.4th 228, 253 (2002), *as modified* (Jan. 15, 2003) (“The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment”); *accord People v. Ala Carte Catering Co.*, 98 Cal.App.3d Supp. 1, 4 (1979) (invalidating Los Angeles’ ordinance barring sales by food trucks within 100 feet of restaurants as a “rather naked restraint of trade” that unconstitutionally discriminates in favor of restaurants having a fixed location).

leaving them on vendors' cars, mailing vendors citations when they merely see vendors' cars in the areas, citing vendors as they move through the area even when not actually working, threatening future impoundment of vending equipment, and adding to vending citations late fees or other additional charges not authorized by SB-946. Information provided by the City makes clear that, since the passage of the Ordinance, sidewalk vendors operating in Los Angeles have received citations or Notices of Violation (NOVs) for alleged unlawful vending in no-vending zones numbering in the thousands, as well as many further citations or NOVs for alleged violations of other of the unlawful restrictions that are described above. Vendor leaders, with the support of Community Power Collective, East LA Community Corporation, and Inclusive Action for the City have attempted to work with all stakeholders in the area, including Councilmember Mitch O'Farrell's office, to find a more equitable solution. None of these efforts has been successful to date.

#### **IV. Demand for Compliance**

We hereby call upon the City to immediately cease its enforcement of the No-Vending Zones and the additional restrictions described above as required to comply fully with SB-946. First, the City must terminate the No-Vending Zones, as they were unlawfully enacted and today continue to be enforced in violation of SB-946. Second, the City must also remove (1) the additional restrictions near farmers' markets, swap meets, and temporary events and (2) the regulations limiting vending in all areas of the city to a narrow strip of space that is street adjacent and not in front of any building, which also violate SB-946. Third, the City must cancel and expunge all past citations and NOVs that were based upon the Unlawful Restrictions and, where required by law, return and reimburse individual vendors subjected to fines, penalties, and unlawful costs or other monetary exactions not permitted by SB-946. Fourth, it is vital that the City end the unjust and improper additional forms of harassment that are now occurring in and around the designated No-Vending Zones. In addition to these immediate steps, we urge the City to create affirmative programs designed to enable street vendors to collaborate with other stakeholders to implement an equitable and inclusive framework for safe sidewalk vending throughout the City.

Street vending helps to create safe and dynamic public spaces and creates vital economic opportunities for small business entrepreneurs. When the City Council approved the Sidewalk Vending Ordinance, Councilman Mitch O'Farrell described the vote as "lift[ing] this shroud of fear in our street vending communities surrounding enforcement." Despite this statement of support, the City has continued to promote policies that are unlawful and expand the culture of fear surrounding street vending. We are hopeful that we can work together with the City to bring its Sidewalk Vending Ordinance and enforcement thereof into full compliance with SB-946 and other applicable laws. Please respond to this letter, including an acceptance of the affirmative steps called for herein, within four weeks of the date of this letter. Thank you for your attention to this matter.

Very Truly Yours,



Katherine J.G. McKeon  
Staff Attorney  
Public Counsel



Matthew T. Heartney  
Senior Counsel  
Arnold & Porter



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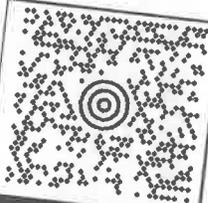


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