

**TO: PARKS AND RECREATION COMMISSION**

**FROM: DAREN ANDERSON DEPARTMENT: COMMUNITY SERVICES**

**DATE: MAY 25, 2021**

**SUBJECT: SIDEWALK VENDORS IN OPEN SPACE AND PARKS**

### **RECOMMENDATION**

Staff recommends that the Parks and Recreation Commission review and provide feedback on the staff's proposed regulations relating to sidewalk vendors operating in Palo Alto's open space and parks. Staff also recommends that the Parks and Recreation Commission consider forming an Ad Hoc Committee to discuss this issue.

### **BACKGROUND**

Within the City of Palo Alto, the Police Department has historically been delegated the responsibility of regulating and issuing permits to "pushcart vendors" which are defined as a person licensed to "offer food intended for immediate consumption or flowers for sale from a wagon, cart or mobile stand from a stationary location on a public sidewalk." See PAMC section 4.10.035.

In 2018, the State of California approved SB 946, which requires cities and counties to permit "sidewalk vendors" to operate within their jurisdictions. SB 946 provides specific provisions for how local governments may regulate sidewalk vendors, and it is intended that local governments will adopt local rules within such limits.

SB 946 requires that sidewalk vendors be able to operate in City parks; however, the City may regulate the time, place, and manner of sidewalk vendors if one or more of the following conditions are met:

- (1) Directly related to objective health, safety, or welfare concerns.
- (2) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities.
- (3) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

The Police Department is currently drafting a replacement ordinance to be compliant with SB 946. As part of this process, staff are seeking input from park staff and the PRC related to rules for sidewalk vendors in parks.

#### City's existing pushcart vendor ordinance

#### **4.10.057 Regulations for pushcart vendors.**

Subject also to the regulations and procedures contained in Chapter 4.04, licenses may be granted to pushcart vendors in accordance with the following criteria and procedures:

- (a) Use. Pushcart vendors shall be restricted to the sale of food intended for immediate consumption or flowers.

- (b) Location and Clearance.
  - (1) Pushcart vendors shall be permitted on public sidewalks except:
    - (A) Within residentially zoned districts;
    - (B) Within one hundred feet of school sites;
    - (C) At locations adjacent to city libraries, community centers, the Cultural Center, public safety facilities and city-owned utility facilities;
    - (D) At locations adjacent to dedicated parks, other than sidewalks adjacent to Lytton Plaza and Cogswell Plaza; and
    - (E) On designated bicycle paths.
  - (2) Pushcart vendors shall be permitted in the area on the west side of Embarcadero Road adjacent to the Palo Alto Airport.
  - (3) No pushcart vendor shall be located in a manner that:
    - (A) Impedes access to any city inspection, maintenance and operational devices or controls;
    - (B) Blocks curbside access to a loading zone, as defined in Section 10.40.010;
    - (C) Impedes pedestrian access from curbside vehicles to the adjacent sidewalk.
  - (4) In areas zoned community commercial (CC), commercial downtown (CD) and in areas of the downtown zoned public facility (PF), no pushcart vendor shall be permitted within a minimum sidewalk clearance width of eight feet between fixed objects, planter wells and/or curbs. Other than in the above locations, the minimum sidewalk clearance width for a pushcart shall be at least half of the sidewalk but not less than three feet.
  - (5) No pushcart vendor shall be permitted on a public sidewalk within a distance of ten feet from corner curb lines and corner crosswalks.
  - (6) No pushcart vendor shall be permitted to locate:
    - (A) Less than five feet from the nearest display window; or
    - (B) Less than twenty-five feet from another pushcart vendor.
  - (7) Except on sidewalks adjacent to Lytton Plaza, no food pushcart vendor shall be permitted to locate within one hundred feet of a restaurant or food market and no flower pushcart vendor shall be permitted to locate within one hundred feet of a flower or plant shop. On sidewalks adjacent to Lytton Plaza, a food pushcart vendor shall be located at least fifty feet from a restaurant or food market and a flower pushcart vendor shall be located at least fifty feet from a flower or plant shop.
  - (8) In nonpublic sidewalk locations, a pushcart vendor shall be situated in a manner that does not obstruct traffic and that assures safe vehicular and customer access.
- (c) Size and Signage.
  - (1) A pushcart structure shall not exceed five feet in height and eight feet in length.
  - (2) Soft umbrellas or canopies which are open on four sides shall be permitted but shall not exceed eight feet in height, measured from ground level.
  - (3) All signs shall be placed on the pushcart structure; no signs shall be permitted on ancillary umbrellas or canopies. Freestanding signs, illuminated signs or flashing lights shall be prohibited.
- (d) Operations.
  - (1) No pushcart vendor shall sell food or flowers from eight p.m. to seven a.m. The pushcart shall be removed from its assigned location by eight p.m.
  - (2) No fires and open flame heating equipment, incidental to the operations of the pushcart, shall be permitted.

(3) No pushcart vendor shall shout, blow a horn, ring a bell or use any sound device or musical instrument, including any loud-speaking radio or sound-amplifying system, for the purpose of attracting attention to any goods or merchandise on sale from the pushcart.

(4) No pushcart vendor shall represent that all or a portion of the proceeds from the pushcart sales will be used for charitable, religious, educational, community, recreational, political or similar nonprofit purpose or are to be transmitted to any person, firm or corporation for any such purpose unless such vendor is licensed under Chapter 4.30 of this code.

(5) A pushcart vendor shall comply with all applicable federal, state or local laws including the regulations of the Santa Clara County health department.

(e) License Application Issuance and Revocation. Procedures for the application for issuance of and revocation of a pushcart vendor license shall be in accord with the provisions of Chapter 4.04; provided, that the following additional regulations shall apply:

(1) The application shall contain a statement of intended use, a map showing location and clearance distances, and a sketch of the proposed pushcart showing dimensions and intended colors.

(2) The application shall include a certificate of insurance in an amount and form satisfactory to the city loss-control manager and a hold harmless and indemnity agreement in favor of the city.

(3) A complete application for a pushcart vendor license shall be reviewed by the city staff for a determination as to whether such application complies with the regulations contained in this chapter. Such review shall include a referral to the design staff of the department of planning and development services for review and comment. The design of the pushcart shall be evaluated on its own merits rather than for its compatibility with the character of nearby building facades.

(4) Conditions of approval may be imposed on pushcart vendor licenses where they are required for the maintenance of the public health, safety and welfare.

(5) The chief of police, or designee, may revoke the pushcart vendor license if he or she determines that the conditions of the license or any provisions of this chapter are being violated, or if municipal use of the sidewalk is required for reasons of public safety or convenience. In the case of a revocation, the licensee shall be notified.

(f) Penalty. Any person, firm or corporation violating any provision of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punishable as provided by law.

(g) Effect of Section. Pushcart vendors who have valid licenses on the effective date of this section, pursuant to prior regulations or guidelines applicable to peddlers, but whose pushcart structures exceed the size requirements contained in Section 4.10.057(c), shall be allowed to process license renewals and continue the use of the pushcart for a period not to exceed five years from the effective date of this section.

California's law on sidewalk vendor in parks--Gov. Code 51038(b)(2)(A) and (B).

Gov. Code 51038(b) (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.

## **DISCUSSION**

The Community Services Department's (CSD) goal is to maintain its parks, open spaces, and facilities as safe, well-programmed, and accessible sites for all to enjoy and recreate in. While vending items in a park is allowed in the City of Palo Alto, new regulations are necessary to ensure sanitary, safe, and clean conditions; to protect wildlife and habitat; and to continue to provide a positive visitor experience.

Staff recommends creating regulations that define where sidewalk vendors are allowed to operate in Palo Alto park land. Additionally, staff recommends creating maps of the limited areas in Palo Alto's open space preserves where vendors are allowed to operate. These maps may assist vendors (as well as staff who enforce the regulations) to understand where vending is allowed.

Staff analyzed the City's parks and open space areas for appropriate locations where sidewalk vendors could safely operate without:

- Blocking trails and parking spaces
- Damaging landscaping and vegetation
- Disrupting active and passive recreation for park visitors
- Disrupting or harming wildlife and habitat
- Impacting scenic views
- Damaging park infrastructure
- Encouraging food in places where it may cause problems (food stains on playgrounds, encouraging pests that pursue food waste, introducing additional food related waste)

Here are some examples of regulations for the PRC to consider:

- Vendors shall not vend in the following areas in Palo Alto park land:
  - Maintenance or storage yards
  - Parking lots, parking stalls or designated parking areas
  - Trails (less than 8 feet wide), grass areas, vegetated areas
  - Within 100 feet of any building, recreation center, bathroom, structure, or playground
  - Within 500 feet of any school site, camp, or senior center
  - Anywhere in the Baylands Athletic Center and Stanford Palo Alto Playing Fields when snack shacks are open for business.
  - Within 5 feet of park benches or other park furniture and within 10 feet of any crosswalk
  - Within 25 feet of any fountain, monument, or art installation
  - Any park land that has an exclusive permitted food provider (e.g. the Baylands Golf Links).
- Vendors are to comply with the following:
  - Vendors must close at least 30 minutes prior to park or preserve closing hours.

- No vending is allowed when a park is closed.
- No vending conveyance, stand, or pushcart shall touch, lean against, or be affixed to any lamp post, parking meter, mailbox, traffic signal, picnic table, fire hydrant, tree, plant, planter box, rock formation, bench, bus shelter, or trashcan.
- Nothing in these rules authorizes vending of personal services including but not limited to boot camps, massage services, yoga, dog training, animal rides, petting zoos, or sports/fitness classes.
- Cannot sell alcohol.
- Cannot sell unsanitary or unsafe, dangerous, or harmful food, beverage, or merchandise. Including archery equipment, knives, sling shots, or any objects that appear to be weapons, such as squirt guns, toy guns, or toy knives.
- Must have and display all permits in a visible area.
- Must comply with Santa Clara County Health Department rules.
- Are responsible for clean-up and removal of any waste, food items, package, litter or materials occurring because of or related to their sales.
- Are prohibited from placing any liquid or solid waste in park trashcans, including dumping ice on park property.
- Must bring vermin proof trash receptacles and remove upon vendor departure from the park
- Prohibited from hooking up to or using any water, electrical, or gas outlets for the sale of their food or merchandise.
- The number of vendors per park are limited to two (2) vendors per acre and not within 25 feet of another vendor.
- Vending in park shall be on a first come first available basis.
- Vending is prohibited during any City sponsored or permitted special event (e.g., festival, concert, movie night, class, carnival, parade, running event, class, or other permitted activity).

Here are two examples of maps of locations in Open Space where sidewalk vendors could be permitted:

Baylands Nature Preserve/Baylands Athletic Center



**TIMELINE**

- June/July 2021: PRC to provide recommendation on a regulation on sidewalk vendors operating in open space and parks
- August/September 2021: Anticipated Council discussion and potential adoption of new sidewalk vendor ordinance. Park rules will either go into the ordinance or be approved as park regulations by the City Manager.