

Communication from Public

Name: Public Counsel
Date Submitted: 02/24/2021 09:57 AM
Council File No: 19-1334
Comments for Public Posting: We urge the Council to oppose the amendments under consideration under this File Number. Please see attached letter.



The nation's largest pro bono law firm

February 24, 2021

Los Angeles City Council
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Sent via electronic mail

Re: Proposed Amendments Adding Subsections (j) and (k) to Section 56.08 of the LAMC

Dear Honorable Councilmembers:

It has come to our attention that the Los Angeles City Council is considering amendments to the Los Angeles Municipal Code (the "LAMC") regarding violations of the Americans with Disabilities Act under Council File No. 19-1334 (the "Amendments"). While we applaud the Council's efforts to protect the health and safety of the City's residents and to ensure access to public rights-of-way for residents with disabilities, we urge you not to support the proposed Amendments. As written, the Amendments could be interpreted to allow the City to apply criminal penalties to sidewalk vendors due to an alleged violation of the Amendments.¹ The application of criminal law to sidewalk vendors for violations of the LAMC related to vending is not only cruel and unnecessary, it is also unlawful in California under the framework established by Senate Bill 946. Given the already-existing prohibitions on violations of the ADA within the LAMC, we urge you to oppose the Amendments. A city that prides itself on inclusion and progressive principles should not be a willing participant in the criminalization of poverty or the targeting of immigrant communities.

Existing Prohibitions on Violations of the ADA

The LAMC already includes numerous prohibitions on blocking public rights-of-way in violation of the ADA, including several ordinances that would apply to sidewalk vendors. In particular, LAMC Section 56.12 prohibits placing or causing to be placed on the sidewalk anything which obstructs any portion of the public right-of-way without a valid permit therefor. Further, LAMC 56.08 is already written to penalize the blocking of the sidewalk in violation of the ADA by an individual or entity occupying the public sidewalk. The Amendments add an additional potential violation that is only applicable to licensed individuals or entities allowed to operate on the sidewalk, many of whom are sidewalk vendors. This unnecessary and discriminatory targeting of sidewalk vendors singles out a largely low-income and immigrant group of City residents for enforcement of laws that are already on the books, significantly increasing the risk of criminalization of vendors without any corresponding benefit to City residents with disabilities.

¹ We have, in fact, seen a handful of cases where LAPD or other law enforcement officers have issued infractions or misdemeanors to sidewalk vendors for "blocking the sidewalk" in a transparent attempt to punish vendors for conducting activity that can no longer be criminalized.



The nation's largest pro bono law firm

Senate Bill 946 Prohibits Criminalization of Sidewalk Vendors

Senate Bill 946 (Lara) was signed into law by then-Governor Jerry Brown and became effective January 1, 2019. The law unambiguously prohibits a local authority from imposing criminal penalties, such as misdemeanors or infractions, for sidewalk vending violations. Government Code Section 51039(d)(1) provides as follows:

A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

A local authority also may not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with SB 946. Sidewalk vending violations are only punishable as administrative fines.²

Improper enforcement practices

In spite of this clear direction from SB 946, we are concerned that the Amendments will be interpreted by StreetsLA and/or by the Los Angeles Police Department as authorizing the application of criminal penalties to street vendors for perceived violations of the Americans with Disabilities Act. While the language of the Amendments does not explicitly include criminal penalties for a violation, neither does it prohibit the application of such criminal penalties. Section 11(m) of the LAMC provides a blanket authorization for the application of criminal misdemeanor or infraction charges against any person who violates any provision of the LAMC, unless otherwise provided. This combination of the Amendments and the existing Section 11(m) of the LAMC would create an opening for criminal citations to be issued to sidewalk vendors. We are deeply concerned that this may result in ADA enforcement as pretext to continue an unjust policy of criminalizing low-income and immigrant workers.

Given that the City of Los Angeles has a painful and recent history of criminalizing sidewalk vendors, the lack of clarification in the Amendments is a significant cause for concern among the sidewalk vending community. Not only would criminalization of sidewalk vending through application of the new ordinance be bad policy, it would be inconsistent with the provisions and legislative intent of SB 946.³ Rules governing the location of sidewalk vending and rules ensuring

² Government Code Section 51039(a)(1)

³ See, Senate Bill 946, Section 1 (a)(5) ("The Legislature finds and declares...the safety and welfare of the general public is promoted by prohibiting criminal penalties for violation of sidewalk vending ordinances and regulations") and Section 1 (a)(6) ("The Legislature finds and declares...the criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern.")

that sidewalk vending does not impede sidewalk access are clearly part of a sidewalk vending program under SB 946.⁴ SB 946 explicitly contemplates street vendor ADA compliance within a local street vending program,⁵ and the law is clear that a violation of a local sidewalk vending program “shall not be punishable as an infraction or misdemeanor.”⁶

Furthermore, to the extent these amendments would be selectively enforced against street vendors – disproportionately low-income workers of color - but not against sidewalk dining or other uses, the City may be putting itself at risk of violating equal protection rights under both state and federal laws.

Enforcement against street vendors must not include criminal citation.

Even if these amendments were adopted, it would be improper to use this general code section in order to charge misdemeanors for activity that is obviously regulated under the special decriminalization framework for sidewalk vending. The California Supreme Court has held that “if a general statute includes the same conduct as a special statute, the court infers that the Legislature intended that conduct to be prosecuted exclusively under the special statute. In effect, the special statute is interpreted as creating an exception to the general statute for conduct that otherwise could be prosecuted under either statute.”⁷

Here, the City’s sidewalk vending ordinance is a special act that regulates sidewalk vending location, including specifically, enabling regulations against sidewalk vending blocking or impeding the sidewalk. For example, the sidewalk vending ordinance enumerates several restricted vending locations. The City’s Sidewalk Vending Rules, adopted pursuant to the ordinance, include numerous provisions relating to vending location and sidewalk access – including a prohibition on placing a vending cart or kiosk so that the “clear space for the passage of pedestrians upon the sidewalk is reduced to a width of less than five feet.” The Rules also prohibit vendors from obstructing or causing to be obstructed the passage of any sidewalk, street, avenue, alley or any other public place, by causing people to congregate at or near the place where goods, wares, food, or merchandise of any kind is being sold or offered for sale.” These regulations govern the exact

⁴ See, Government Code Section 51038(c) “A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns.”; Section 51038(c)(3) (“requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990...”); Section 51038(b)(1) (“A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.”); Section 51038(b)(4)(A) (“A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.”).

⁵ Government Code Section 51038(c)(3) (“requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990...”)

⁶ Government Code Section 51039(d)

⁷ *People v. Murphy* (2011) 52 Cal.4th 81, 86–88, 127 Cal.Rptr.3d 78, 253 P.3d 1216; *In re Williamson* (1954) 43 Cal.2d 651. (“It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.”)



The nation's largest pro bono law firm

same activity that would be prohibited by these proposed amendments to LAMC 56.08. A violation of these street vending regulations would commonly result in a violation of the proposed amendments to LAMC 56.08. But a violation of the street vending regulations is explicitly limited to non-criminal administrative citations – as intended by the City Council in adopting the sidewalk vending program, and as required by SB 946. When regulating activity that is squarely within the sidewalk vending program - like vending location or making sure vending operations don't impede access to sidewalks and pathways – violations should be enforced only under the special sidewalk vending program. That enforcement may not include criminal misdemeanor charges.

Opposition to Amendments

Los Angeles cannot be a city of inclusion and opportunity while it is taking actions that are complicit with the criminalization of low income and immigrant communities. *We urge the City Council to oppose the proposed amendments to Section 56.08 of the LAMC.*

We look forward to continued discussions with the Honorable Councilmembers and other City officials with the aim of ensuring all residents of Los Angeles have safe access to its public rights-of-way without creating the risk of criminalizing Los Angeles' most vulnerable residents.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Payette".

Brandon Payette

Staff Attorney
Public Counsel

CC: Michael N. Feuer, Los Angeles City Attorney

Communication from Public

Name: Rabeya Sen

Date Submitted: 02/24/2021 02:06 PM

Council File No: 19-1334

Comments for Public Posting: Dear Honorable Councilmembers, Esperanza Community Housing strong urges you to oppose the proposed amendments to the City Municipal Code because we need to ensure that our public investment goes toward supporting street vendors not criminalizing them. At Esperanza we work with the communities of South Central to ensure equitable development, racial justice, and human rights for all. Part of our work also includes working for immigrant rights and working alongside residents and our allies to defend all Angelenos from this country's broken immigration system. Unfortunately, the proposed amendments to the municipal code would result in further risk of detention and deportation for so many who are a part of Los Angeles' immigrant communities. ADA compliance is imperative to ensure streets remain clear for pedestrian access and for those who walk and roll on the sidewalk. However, amending the municipal code in this way puts sidewalk vendors at increased risk of misdemeanors and, from that, at increased risk of deportation depending on their documentation status. While the City of LA continues to look at ways to provide defend our immigrant communities, these proposed amendments would only serve to undermine those efforts and harm our immigrant communities. A new program from sidewalk vending began 2 months before last year's first Covid-related shutdown. Since then, there has been no true investment in their operation and compliance in the entire part of this last year. Therefore, we urge you to please oppose these amendments and, instead, ensure that vendors are meaningfully included as part of the local economy rather than being criminalized. Lastly, we have also attached the letter, dated Feb. 24, 2021, from Public Counsel which further details concerns about the amendments. Thank you.



The nation's largest pro bono law firm

February 24, 2021

Los Angeles City Council
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Sent via electronic mail

Re: Proposed Amendments Adding Subsections (j) and (k) to Section 56.08 of the LAMC

Dear Honorable Councilmembers:

It has come to our attention that the Los Angeles City Council is considering amendments to the Los Angeles Municipal Code (the "LAMC") regarding violations of the Americans with Disabilities Act under Council File No. 19-1334 (the "Amendments"). While we applaud the Council's efforts to protect the health and safety of the City's residents and to ensure access to public rights-of-way for residents with disabilities, we urge you not to support the proposed Amendments. As written, the Amendments could be interpreted to allow the City to apply criminal penalties to sidewalk vendors due to an alleged violation of the Amendments.¹ The application of criminal law to sidewalk vendors for violations of the LAMC related to vending is not only cruel and unnecessary, it is also unlawful in California under the framework established by Senate Bill 946. Given the already-existing prohibitions on violations of the ADA within the LAMC, we urge you to oppose the Amendments. A city that prides itself on inclusion and progressive principles should not be a willing participant in the criminalization of poverty or the targeting of immigrant communities.

Existing Prohibitions on Violations of the ADA

The LAMC already includes numerous prohibitions on blocking public rights-of-way in violation of the ADA, including several ordinances that would apply to sidewalk vendors. In particular, LAMC Section 56.12 prohibits placing or causing to be placed on the sidewalk anything which obstructs any portion of the public right-of-way without a valid permit therefor. Further, LAMC 56.08 is already written to penalize the blocking of the sidewalk in violation of the ADA by an individual or entity occupying the public sidewalk. The Amendments add an additional potential violation that is only applicable to licensed individuals or entities allowed to operate on the sidewalk, many of whom are sidewalk vendors. This unnecessary and discriminatory targeting of sidewalk vendors singles out a largely low-income and immigrant group of City residents for enforcement of laws that are already on the books, significantly increasing the risk of criminalization of vendors without any corresponding benefit to City residents with disabilities.

¹ We have, in fact, seen a handful of cases where LAPD or other law enforcement officers have issued infractions or misdemeanors to sidewalk vendors for "blocking the sidewalk" in a transparent attempt to punish vendors for conducting activity that can no longer be criminalized.



The nation's largest pro bono law firm

Senate Bill 946 Prohibits Criminalization of Sidewalk Vendors

Senate Bill 946 (Lara) was signed into law by then-Governor Jerry Brown and became effective January 1, 2019. The law unambiguously prohibits a local authority from imposing criminal penalties, such as misdemeanors or infractions, for sidewalk vending violations. Government Code Section 51039(d)(1) provides as follows:

A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

A local authority also may not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with SB 946. Sidewalk vending violations are only punishable as administrative fines.²

Improper enforcement practices

In spite of this clear direction from SB 946, we are concerned that the Amendments will be interpreted by StreetsLA and/or by the Los Angeles Police Department as authorizing the application of criminal penalties to street vendors for perceived violations of the Americans with Disabilities Act. While the language of the Amendments does not explicitly include criminal penalties for a violation, neither does it prohibit the application of such criminal penalties. Section 11(m) of the LAMC provides a blanket authorization for the application of criminal misdemeanor or infraction charges against any person who violates any provision of the LAMC, unless otherwise provided. This combination of the Amendments and the existing Section 11(m) of the LAMC would create an opening for criminal citations to be issued to sidewalk vendors. We are deeply concerned that this may result in ADA enforcement as pretext to continue an unjust policy of criminalizing low-income and immigrant workers.

Given that the City of Los Angeles has a painful and recent history of criminalizing sidewalk vendors, the lack of clarification in the Amendments is a significant cause for concern among the sidewalk vending community. Not only would criminalization of sidewalk vending through application of the new ordinance be bad policy, it would be inconsistent with the provisions and legislative intent of SB 946.³ Rules governing the location of sidewalk vending and rules ensuring

² Government Code Section 51039(a)(1)

³ See, Senate Bill 946, Section 1 (a)(5) ("The Legislature finds and declares...the safety and welfare of the general public is promoted by prohibiting criminal penalties for violation of sidewalk vending ordinances and regulations") and Section 1 (a)(6) ("The Legislature finds and declares...the criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern.")



The nation's largest pro bono law firm

that sidewalk vending does not impede sidewalk access are clearly part of a sidewalk vending program under SB 946.⁴ SB 946 explicitly contemplates street vendor ADA compliance within a local street vending program,⁵ and the law is clear that a violation of a local sidewalk vending program “shall not be punishable as an infraction or misdemeanor.”⁶

Furthermore, to the extent these amendments would be selectively enforced against street vendors – disproportionately low-income workers of color - but not against sidewalk dining or other uses, the City may be putting itself at risk of violating equal protection rights under both state and federal laws.

Enforcement against street vendors must not include criminal citation.

Even if these amendments were adopted, it would be improper to use this general code section in order to charge misdemeanors for activity that is obviously regulated under the special decriminalization framework for sidewalk vending. The California Supreme Court has held that “if a general statute includes the same conduct as a special statute, the court infers that the Legislature intended that conduct to be prosecuted exclusively under the special statute. In effect, the special statute is interpreted as creating an exception to the general statute for conduct that otherwise could be prosecuted under either statute.”⁷

Here, the City’s sidewalk vending ordinance is a special act that regulates sidewalk vending location, including specifically, enabling regulations against sidewalk vending blocking or impeding the sidewalk. For example, the sidewalk vending ordinance enumerates several restricted vending locations. The City’s Sidewalk Vending Rules, adopted pursuant to the ordinance, include numerous provisions relating to vending location and sidewalk access – including a prohibition on placing a vending cart or kiosk so that the “clear space for the passage of pedestrians upon the sidewalk is reduced to a width of less than five feet.” The Rules also prohibit vendors from obstructing or causing to be obstructed the passage of any sidewalk, street, avenue, alley or any other public place, by causing people to congregate at or near the place where goods, wares, food, or merchandise of any kind is being sold or offered for sale.” These regulations govern the exact

⁴ See, Government Code Section 51038(c) “A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns.”); Section 51038(c)(3) (“requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990...”); Section 51038(b)(1) (“A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.”); Section 51038(b)(4)(A) (“A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.”).

⁵ Government Code Section 51038(c)(3) (“requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990...”)

⁶ Government Code Section 51039(d)

⁷ *People v. Murphy* (2011) 52 Cal.4th 81, 86–88, 127 Cal.Rptr.3d 78, 253 P.3d 1216; *In re Williamson* (1954) 43 Cal.2d 651. (“It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.”)



The nation's largest pro bono law firm

same activity that would be prohibited by these proposed amendments to LAMC 56.08. A violation of these street vending regulations would commonly result in a violation of the proposed amendments to LAMC 56.08. But a violation of the street vending regulations is explicitly limited to non-criminal administrative citations – as intended by the City Council in adopting the sidewalk vending program, and as required by SB 946. When regulating activity that is squarely within the sidewalk vending program - like vending location or making sure vending operations don't impede access to sidewalks and pathways – violations should be enforced only under the special sidewalk vending program. That enforcement may not include criminal misdemeanor charges.

Opposition to Amendments

Los Angeles cannot be a city of inclusion and opportunity while it is taking actions that are complicit with the criminalization of low income and immigrant communities. We urge the City Council to oppose the proposed amendments to Section 56.08 of the LAMC.

We look forward to continued discussions with the Honorable Councilmembers and other City officials with the aim of ensuring all residents of Los Angeles have safe access to its public rights-of-way without creating the risk of criminalizing Los Angeles' most vulnerable residents.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Payette".

Brandon Payette

Staff Attorney
Public Counsel

CC: Michael N. Feuer, Los Angeles City Attorney