



# Sidewalk Vending Regulation and Enforcement

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# California Sidewalk Vendors Regulation & Enforcement

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# **California Sidewalk Vendors Regulation & Enforcement**

## **I. Introduction**

In 2018, California passed Senate Bill (“SB”) 946, also known as the Safe Sidewalk Vending Act, decriminalizing and forcing local agencies to allow sidewalk vending operations.<sup>1</sup> SB 946 expressly makes sidewalk vending a protected health, safety, and welfare activity, such that any local regulations against it require overwhelming health, safety, and welfare justifications that are limited to minimum time, place, and manner restrictions.<sup>2</sup> SB 946 expressly makes sidewalk vending an important public activity for promoting “safe and dynamic public spaces,” “economic development,” “entrepreneurship,” “access to desired goods,” and access to “culturally significant food and merchandise.”<sup>3</sup>

SB 946 also expressly protects the low-income and immigrants, including undocumented immigrants by prohibiting a requirement for sidewalk vendors to have social security numbers and prohibiting cooperation with federal law enforcement without a federal court order.<sup>4</sup> The law aims to provide economic opportunities for small vendors while reducing punitive measures that disproportionately impact marginalized communities.<sup>5</sup>

While SB 946’s intentions were good, it has led to the proliferation of unlawful sidewalk vending activities under color of law.<sup>6</sup> These unlawful sidewalk vending activities have presented significant enforcement challenges for cities and counties across the State.<sup>7</sup> Given that outright bans on sidewalk vending are impermissible, municipalities must navigate complex legal and political circumstances to regulate and enforce sidewalk vending laws effectively.

The complexity of the SB 946 sidewalk vending situation was complicated by the addition of SB 972 in 2022, adding more protections and regulations to sidewalk food vending.<sup>8</sup> SB 972

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<sup>1</sup> SB 946 (2018) is codified in Government Code sections 51036 through 51039.

<sup>2</sup> The text of SB 946 (2018) can be found on the California Legislative Information website at [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB972](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB972).

<sup>3</sup> See Section 1 of SB 946 (2018).

<sup>4</sup> See SB 946 (2018), §§ 1–3; Gov. Code, § 51038(c)(4).

<sup>5</sup> See SB 946 (2018), § 1.

<sup>6</sup> See COUNTY OF SANTA BARBARA, *The Unintended Consequences of Illicit Roadside Food Vending*, <https://www.edhat.com/news/the-unintended-consequences-of-illicit-roadside-food-vending> (September 18, 2024); Hosam Elattar & Brandon Pho, *More OC City Officials Look to Crack Down on Street Vendors*, VOICE OF OC, <https://voiceofoc.org/2023/03/more-oc-city-officials-look-to-crack-down-on-street-vendors> (March 30, 2023).

<sup>7</sup> See COUNTY OF SANTA BARBARA, *The Unintended Consequences of Illicit Roadside Food Vending*, <https://www.edhat.com/news/the-unintended-consequences-of-illicit-roadside-food-vending> (September 18, 2024); Hosam Elattar & Brandon Pho, *More OC City Officials Look to Crack Down on Street Vendors*, VOICE OF OC, <https://voiceofoc.org/2023/03/more-oc-city-officials-look-to-crack-down-on-street-vendors> (March 30, 2023).

<sup>8</sup> SB 972 (2022) is codified in Health and Safety Code sections 113818, 113831, 113868, and 114368 through 114368.8.

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created another classification of retail food operations known as the “compact mobile food operation” (“CMFO”), which is effectively synonymous with “sidewalk vending” for food.<sup>9</sup>

The situation is further complicated by another pending bill—SB 635.<sup>10</sup> SB 635 aims to further limit local enforcement authority and effectiveness. Most significantly, SB 635 would prohibit cities and counties from contracting to “enforce sidewalk vending rules or regulations”, to “impound sidewalk vending equipment”, or to “cite, fine, or prosecute a sidewalk vendor for a violation of any sidewalk vending rules or regulations.”<sup>11</sup> These enforcement prohibitions would apply both to sidewalk vending under SB 946, as well as CMFO operations under SB 972.<sup>12</sup> SB 635 would also add further prohibitions about inquiring into immigration and citizenship status, including a requirement to destroy records relating to previous inquiries, and a prohibition against cooperating with federal immigration authorities without a subpoena or warrant.<sup>13</sup> Even more significantly, SB 635 prohibits screening for criminal histories (including violent crimes, gang crimes, and crimes against children), meaning that cities and counties would be required to allow convicted violent criminals to operate on public rights-of-way throughout their jurisdiction, including potentially near schools and around other areas with children.<sup>14</sup>

This whitepaper will explore the legal landscape of sidewalk vending, the enforcement challenges posed by SB 946, the effect of SB 972, and practical approaches to mitigating unlawful sidewalk vending. This paper will provide guidance for cities and counties on crafting regulatory strategies that comply with State law while ensuring public health, safety, and welfare, and fair business practices.

## **II. SB 946 (2018)—The Safe Sidewalk Vending Act**

SB 946 was enacted to decriminalize sidewalk vending and promote economic opportunity, particularly for immigrants and low-income individuals.<sup>15</sup> SB 946 established sidewalk vending as a matter of statewide concern, overriding conflicting municipal regulations even in charter cities and counties.<sup>16</sup> SB 946 purports to promote health, safety, and economic development while enhancing the cultural and commercial vibrancy of public spaces.<sup>17</sup>

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<sup>9</sup> See Health & Saf. Code, § 113831(c); Gov. Code, § 51036(a).

<sup>10</sup> See SB 635 (2024–25), available at [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202520260SB635](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260SB635).

<sup>11</sup> SB 635 (2024–25), § 5.

<sup>12</sup> SB 635 (2024–25), §§ 5–6.

<sup>13</sup> SB 635 (2024–35), §§ 2–8.

<sup>14</sup> See SB 635 (2024–25), §§ 4, 8.

<sup>15</sup> See SB 946 (2018), § 1; Gov. Code, § 51039.

<sup>16</sup> See SB 946 (2018), § 1.

<sup>17</sup> See SB 946 (2018), § 1.

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Under SB 946, a sidewalk vendor is defined as an individual selling food or merchandise from a nonmotorized conveyance on public sidewalks or pedestrian paths.<sup>18</sup> However, SB 946 often uses similar, but not synonymous, terms to define permissible public sidewalk vending areas, such as “public right-of-way”, “public sidewalk”, “pedestrian path,” public “park”, “neighborhood”, “residential” zone, and “street”.<sup>19</sup> These inconsistencies lead to some of the confusion about how to effectively enforce against unlawful sidewalk vending activities.

SB 946 categorizes sidewalk vendors as either stationary (operating from a fixed location) or roaming (continuously moving and only stopping for transactions).<sup>20</sup> SB 946 then regulates sidewalk vending by identifying specific locations where sidewalk vending is permitted or prohibited based on whether the vendor is stationary or roaming.<sup>21</sup> In public parks, stationary vending may be restricted if an exclusive concession agreement is in place, but roaming vending cannot be banned.<sup>22</sup> In residential zones, cities may also prohibit stationary vending, but also must allow roaming vending.<sup>23</sup>

SB 946 identifies areas that are presumptively permissive for sidewalk vending, but may be prohibited by a compliant local ordinance.<sup>24</sup> Prohibitible areas include stationary vending in residential zones, stationary vending in public parks with exclusive concession agreements, and locations near farmers’ markets, swap meets, or temporary permitted events.<sup>25</sup> Prohibiting sidewalk vending in these areas requires limited time, place, and manner restrictions based upon legitimate health, safety, and welfare concerns.<sup>26</sup>

The law sets limits on municipal regulation authority, preventing cities and counties from imposing regulations based on community animus or economic competition.<sup>27</sup> Additionally, non-governmental entities cannot be given the power to approve vendors.<sup>28</sup> Local governments cannot impose outright bans on sidewalk vending in public rights-of-way nor non-residential neighborhoods.<sup>29</sup> Roaming vending cannot be banned in parks or residential areas.<sup>30</sup>

Despite SB 946’s protections, cities and counties may regulate sidewalk vending by requiring business licenses and permits, passing well justified health, safety, and welfare

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<sup>18</sup> Gov. Code, § 51036(a).

<sup>19</sup> See Gov. Code, §§ 51036(a), 51038.

<sup>20</sup> Gov. Code, § 51036.

<sup>21</sup> See Gov. Code, § 51038.

<sup>22</sup> Gov. Code, § 51038(b)(2).

<sup>23</sup> Gov. Code, § 51038(b)(4)(B).

<sup>24</sup> Gov. Code, §§ 51037, 51038.

<sup>25</sup> Gov. Code, § 51038.

<sup>26</sup> Gov. Code, § 51038.

<sup>27</sup> Gov. Code, § 51037, 51038(e).

<sup>28</sup> Gov. Code, § 51038(b)(3).

<sup>29</sup> Gov. Code, §§ 51037, 51038.

<sup>30</sup> Gov. Code, § 51038(b).

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regulations, and imposing minimum reasonable time, place, and manner restrictions.<sup>31</sup> Sidewalk vendors must also comply with food safety standards, accessibility laws under the American with Disabilities Act (“ADA”), and generally applicable law restrictions.<sup>32</sup> While operational hours may be restricted, they must be consistent with those imposed on other businesses.<sup>33</sup>

### **III. SB 972 (2022)—Sidewalk Food Vending Regulations**

In 2022, SB 972 introduced additional regulations for sidewalk food vending by establishing the CMFO (Compact Mobile Food Operation) category.<sup>34</sup> While SB 972 is codified in the Health and Safety Code, the CMFO is effectively the same definition of SB 946’s sidewalk vending definition in the Government Code.<sup>35</sup> SB 972 defines CMFO operations to include one’s person, pushcarts, stands, displays, pedal-driven carts, wagons, showcases, racks, and nonmotorized conveyances, just like SB 947 defines “sidewalk vendors”.<sup>36</sup>

SB 972 is a bit technically complicated in its application, but it helps define what food related activities sidewalk vendors are allowed to engage upon.<sup>37</sup> It does so in the context of regulating CMFO operations and the CMFO’s relationship with support facilities.<sup>38</sup> Under SB 972, support facilities include food support facilities as well as auxiliary conveyance support.<sup>39</sup> Depending on the type of food operations involved, CMFO’s must have access to these support facilities to some extent.<sup>40</sup>

Food support facilities include permanent food facilities, cottage food operations, microenterprise home kitchens, and private homes.<sup>41</sup> These food support facilities may be used to provide food preparation, food products, storage, cleaning, and decontamination.<sup>42</sup> Auxiliary conveyance support services include on-site operational support, such as food preparation and support facilities, restrooms, handwashing facilities, warewashing facilities, potable water supply, and refuse collection.<sup>43</sup>

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<sup>31</sup> Gov. Code, §§ 51038, 51039.

<sup>32</sup> See SB 972 (2022); Gov. Code, §§ 51037(b), 51038(c).

<sup>33</sup> Gov. Code, § 51038(c)(1).

<sup>34</sup> SB 972 (2022) is codified in Health and Safety Code sections 113818, 113831, 113868, and 114368 through 114368.8.

<sup>35</sup> See Health & Saf. Code, § 113831(c); Gov. Code, § 51036(a).

<sup>36</sup> Health & Saf. Code, § 113831(c); Gov. Code, § 51036(a).

<sup>37</sup> See Health & Saf. Code, §§ 113818, 114368.2–114368.4.

<sup>38</sup> See Health & Saf. Code, §§ 113818, 113831(c), 114368–114368.4.

<sup>39</sup> See Health & Saf. Code, §§ 114368.2–114368.4.

<sup>40</sup> See Health & Safe. Code, §§ 114368–114368.7.

<sup>41</sup> See Health & Saf. Code, §§ 113818, 114368.2–114368.4.

<sup>42</sup> See Health & Saf. Code, §§ 113818, 114368–114368.4.

<sup>43</sup> See Health & Saf. Code, § 114368.4.

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Food preparation under SB 972 is more regulated than under SB 947. CMFO's (sidewalk food vendors) may only engage in limited food preparation, with more restrictions the more potentially hazardous the food involved.<sup>44</sup> Specifically allowed activities, based on the relevant risks and conditions involved, may include: cooking, frying, baking, roasting, steaming, boiling, popping, blending, juicing, temperature control, heating, reheating, cooling, portioning, slicing, chopping, shaving, assembling, seasoning, dispensing, or serving.<sup>45</sup> CMFO's may sell non-hazardous prepackaged food, whole uncooked produce, and certain items that require minimal preparation without much regulation.<sup>46</sup> However, potentially hazardous foods, including raw meat, poultry, and fish, cannot be prepared or stored without more rigorous approved facilities.<sup>47</sup> Certain activities are outright prohibited, such as cooling, thawing, grinding, use of milk products, and food washing.<sup>48</sup>

## **IV. Sidewalk Vendor Enforcement**

### **1. Decriminalization**

Under both SB 946 and SB 972, sidewalk vending and CMFO violations are no longer subject to criminal penalties.<sup>49</sup> SB 946 expressly found that it advances the safety and welfare of the general public by decriminalizing sidewalk vending.<sup>50</sup> Even preexisting criminal cases had to be dismissed and expunged.<sup>51</sup>

### **2. Administrative Fines**

The sole form of enforcement allowed by SB 946 and SB 972 are administrative fines and business license revocations.<sup>52</sup> Even then, fines have to be reduced by 80% if the violator establishes an inability to pay, which would make a \$100 first offense violation only \$20.<sup>53</sup> And the right to demand an adjudication of the inability to pay may be made at any time in perpetuity until paid, even after the administrative fine is final and payment is delinquent.<sup>54</sup> Even then, if the violator doesn't pay, there can be no additional penalties for the refusal to pay.<sup>55</sup>

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<sup>44</sup> See Health & Saf. Code, §§ 113818, 114368–114368.4.

<sup>45</sup> See Health & Saf. Code, § 113818(a).

<sup>46</sup> See

<sup>47</sup> See Health & Saf. Code, § 113818(b), 114368.4.

<sup>48</sup> Health & Saf. Code, § 113818(b).

<sup>49</sup> SB 946 (2018), §§ 1–2; SB 972 (2022), § 4; Gov. Code, § 51039; Health & Saf. Code, § 14368.8.

<sup>50</sup> SB 946 (2018), § 1.

<sup>51</sup> Gov. Code, § 51039.

<sup>52</sup> Gov. Code, § 51039; Health & Saf. Code, § 14368.8.

<sup>53</sup> See Gov. Code, §§ 51039(f), 68632; Health & Saf. Code, § 14368.8(e).

<sup>54</sup> See Gov. Code, §§ 51039(f), 68632; Health & Saf. Code, § 14368.8(e).

<sup>55</sup> Gov. Code, § 51039(c); Health & Saf. Code, § 14368.8(d).

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SB 946 sidewalk vendors with permits face administrative fines of \$100 for a first offense, \$200 for a second offense within one year, and \$500 for each additional violation within one year, with the possibility of business license revocation after the fourth offense.<sup>56</sup> Unpermitted sidewalk vendors are subject to fines of \$250 for a first offense, \$500 for a second offense within one year, and \$1,000 for each additional violation within one year.<sup>57</sup> However, these elevated fines for unpermitted operations must be reduced to the permitted limits if the unpermitted sidewalk vendor subsequently obtains a permit.<sup>58</sup>

To make things even more confusing, under SB 972, CMFOs (which are sidewalk food vendors) have a different administrative fine schedule than SB 946 sidewalk vendors.<sup>59</sup> Pursuant to SB 972, CMFO sidewalk vendors are only subject to a notice of violation for a first offense, \$100 for a second offense within one year, \$200 for a third violation within one year, and \$500 for each additional violation within one year.<sup>60</sup> There is no business license or permit revocation authorized by SB 972.<sup>61</sup> If the violator is unpermitted, then the jurisdiction may issue an administrative fine up to three times the cost of the permit instead of a set elevated fine scheduled like under SB 946.<sup>62</sup>

Finally, both SB 946 and SB 92 encourage alternative dispositions, such as community service, instead of monetary fines.<sup>63</sup>

### **3. Other Remedies**

Experience has shown that these small and largely unenforceable administrative fines are not sufficiently deterring unlawful sidewalk vending violations.<sup>64</sup> The violators are often part of, or victims of, organized crime (including human trafficking), unidentifiable, and insolvent.<sup>65</sup> Depending on the circumstances, unlawful sidewalk vending activities can be extremely dangerous

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<sup>56</sup> Gov. Code, § 51039(a).

<sup>57</sup> Gov. Code, § 51039(a)(3).

<sup>58</sup> Gov. Code, § 51039(a)(3)(b).

<sup>59</sup> See Gov. Code, §§ 51036(a), 51039(a); Health & Saf. Code, §§ 113831(c), 114368.8(c).

<sup>60</sup> Health & Saf. Code, § 114368.8(c).

<sup>61</sup> See Health & Saf. Code, § 114368.8.

<sup>62</sup> Health & Saf. Code, § 114368.8(d); Gov. Code, § 51039(a).

<sup>63</sup> See Gov. Code, § 51039(f)(3); Health & Saf. Code, § 114368.8(e)(3).

<sup>64</sup> See COUNTY OF SANTA BARBARA, *The Unintended Consequences of Illicit Roadside Food Vending*, <https://www.edhat.com/news/the-unintended-consequences-of-illicit-roadside-food-vending> (September 18, 2024); Hosam Elattar & Brandon Pho, *More OC City Officials Look to Crack Down on Street Vendors*, VOICE OF OC, <https://voiceofoc.org/2023/03/more-oc-city-officials-look-to-crack-down-on-street-vendors> (March 30, 2023).

<sup>65</sup> See COUNTY OF SANTA BARBARA, *The Unintended Consequences of Illicit Roadside Food Vending*, <https://www.edhat.com/news/the-unintended-consequences-of-illicit-roadside-food-vending> (September 18, 2024); Hosam Elattar & Brandon Pho, *More OC City Officials Look to Crack Down on Street Vendors*, VOICE OF OC, <https://voiceofoc.org/2023/03/more-oc-city-officials-look-to-crack-down-on-street-vendors> (March 30, 2023).

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due to risk of foodborne illness, support for organized crime and human trafficking, violence, attractive nuisance to children, blocked ADA access, diverted pedestrian traffic, and incursions into vehicular traffic, amongst other dangers.<sup>66</sup> In addition, unlawful sidewalk vending detracts from legitimate businesses, decreases sales tax revenues, decreases community aesthetics, attracts criminal behavior, decreases community investment, decreases property values, decreases property tax revenues, and detracts from the public's use and enjoyment of public spaces, amongst other issues.<sup>67</sup>

Accordingly, many jurisdictions are exploring creative options to address unlawful sidewalk vending beyond mere administrative citations.<sup>68</sup> These options may include: confiscating potentially dangerous food; confiscating potentially dangerous equipment; impounding equipment; declaring unpermitted food, merchandise, and equipment forfeit; disposing of, or destroying, hazardous or abandoned food, merchandise, and equipment; charging impound fees; etcetera. However, it is unclear whether these creative options are strictly allowed in light of the language in SB 946 and SB 972 that expressly provide that these sidewalk vending violations are “punishable only by an administrative fine.”<sup>69</sup>

To be effective, it is important that jurisdictions are able to differentiate between sidewalk vending violations and violations of other generally applicable laws. While sidewalk vending violations may be limited to administrative fines, cities and counties retain their full power to enforce against other violations.<sup>70</sup> Just because a violation of other applicable laws is used in furtherance of sidewalk vending operations, does not make that violation a sidewalk vending violation. If that violation is citable to any provision other than the sidewalk vending statutes and ordinances, then that violation is not a sidewalk vending violation and the jurisdiction may utilize its other enforcement options. Those options may include remedies such as civil penalties, to forfeitures, to arrest and criminal prosecution, to cost recovery and judgment liens.

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<sup>66</sup> See COUNTY OF SANTA BARBARA, *The Unintended Consequences of Illicit Roadside Food Vending*, <https://www.edhat.com/news/the-unintended-consequences-of-illicit-roadside-food-vending> (September 18, 2024); Hosam Elattar & Brandon Pho, *More OC City Officials Look to Crack Down on Street Vendors*, VOICE OF OC, <https://voiceofoc.org/2023/03/more-oc-city-officials-look-to-crack-down-on-street-vendors> (March 30, 2023).

<sup>67</sup> See COUNTY OF SANTA BARBARA, *The Unintended Consequences of Illicit Roadside Food Vending*, <https://www.edhat.com/news/the-unintended-consequences-of-illicit-roadside-food-vending> (September 18, 2024); Hosam Elattar & Brandon Pho, *More OC City Officials Look to Crack Down on Street Vendors*, VOICE OF OC, <https://voiceofoc.org/2023/03/more-oc-city-officials-look-to-crack-down-on-street-vendors> (March 30, 2023).

<sup>68</sup> See, e.g., Hosam Elattar & Brandon Pho, *More OC City Officials Look to Crack Down on Street Vendors*, VOICE OF OC, <https://voiceofoc.org/2023/03/more-oc-city-officials-look-to-crack-down-on-street-vendors> (March 30, 2023).

<sup>69</sup> Health & Saf. Code, § 114368.8(a); see Gov. Code, § 51039.

<sup>70</sup> See Gov. Code, §§ 51037(b), 51038(c)(7), 51039(a); Health & Saf. Code, §§ 114368, 114368.1, 114368.4.

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## **V. Conclusion**

The regulation and enforcement of sidewalk vending remains a complex issue due to the protections and restrictions imposed by SB 946 and SB 972 (with potentially even more restrictions if SB 635 is passed). While cities and counties cannot impose outright bans, they retain authority to regulate vending activities in a manner that protects public health, safety, and welfare. More importantly, jurisdictions retain full power to use all available enforcement tools against all other violations of generally applicable laws that are violated in the commission of sidewalk vending. By adopting innovative enforcement strategies, fostering community collaboration, focusing on non-sidewalk-vending violation enforcement, and advocating for legislative refinements, municipalities can develop effective solutions tailored to their unique challenges.