



## Constitutional Policing Update

### Sidewalk Vendors: What Can Police Enforce?

In 2018, the California Legislature began decriminalizing sidewalk vendors. A “sidewalk vendor” is a person who sells food or merchandise on a public sidewalk or other pedestrian path. The law summarized in this bulletin does not apply to food trucks or anything with a motor or to vendors operating on private property and not in the public right of way.

#### Are there any criminal consequences for sidewalk vendors?

Any regulation of sidewalk vendors must be consistent with Cal. Govt. Code §§ 51036–51039. Any municipal code with criminal punishment for sidewalk vendors is invalid and should not be enforced by OCSA. If a City Council or Board of Supervisors (for unincorporated areas) adopts a “sidewalk vending program,” vendors may be given an administrative fine but cannot be cited or arrested criminally for sidewalk vending.

#### Are there limits to a sidewalk vending program?

A city or county may only regulate the time, place, and manner of sidewalk vending. The regulations must be "directly related to objective health, safety, or welfare concerns." This means that cities are prohibited from:

- 1) Banning all sidewalk vending (Cal. Govt. Code, § 51038).
- 2) Requiring a sidewalk vendor to operate within specific parts of the public right-of-way or specific neighborhoods or areas – except for a restriction directly related to objective health, safety, or welfare concerns or ensuring vendors leave a 4-foot pathway on the sidewalk for ADA compliance. (Cal. Govt. Code, § 51038(b)(1), (c)(3));
- 3) Restricting the overall number of sidewalk vendors permitted to operate in public areas– unless directly related to objective health, safety, or welfare concerns (Cal. Govt. Code, § 51038(b)(5));
- 4) Requiring a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise (Cal. Govt. Code, § 51038(b)(3)); and
- 5) Imposing any requirement rooted in animus or economic competition concerns. (Cal. Govt. Code, § 51038(e));

#### What if a contract city has not implemented a sidewalk vending program?

It's important to note that without a sidewalk vending program in place, no enforcement options (administrative or criminal) are available. **For instance, in Orange County, the Board of Supervisors has not adopted a sidewalk vending program. This means that no enforcement action can be taken by any entity in unincorporated county areas.** In contrast, neighboring counties such as Los Angeles, Riverside, San Bernardino, and San Diego have all adopted sidewalk vending programs, enabling them to regulate certain elements related to food safety and public health.

#### Who enforces a sidewalk vending program?

Code enforcement, health departments, or other city regulatory bodies are responsible for enforcing any applicable administrative fine. As of January 1, 2023, SB 972 further reduced any criminal consequences for food vendors. Cities can still conduct routine inspections of carts and preparation kitchens, but violations are no longer a misdemeanor, and only administrative citations with fines are permitted. The intent behind SB 972 is to adopt an “education first” approach to environmental health protection and not criminal enforcement. A deputy cannot cite or arrest a sidewalk vendor merely for selling items on the public sidewalk. Deputies should only enforce criminal law violations and remain mindful of their authority when requested to keep the peace during a code enforcement or health department sweep.

