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Report regarding an ordinance amending Title 6, Chapters 6.04, 6.16 and 6.90 of the South San Francisco Municipal Code pertaining to street vendor, sidewalk vendor and peddler regulations (*Mike Rudis, Master Sergeant*)

RECOMMENDATION

It is recommended that the City Council introduce an ordinance amending Title 6, Chapters 6.04, 6.16 and 6.90 of the South San Francisco Municipal Code pertaining to street vendor, sidewalk vendor and peddler regulations, and waive further reading.

BACKGROUND/DISCUSSION

California's New Sidewalk Vendor Law

Recently, Senate Bill 946 ("SB 946") amended California law to limit cities' ability to regulate sidewalk vendors operating via non-motorized conveyances within their jurisdictions. SB 946, which became effective on January 1, 2019, decriminalized such sidewalk vending activities and afforded additional protections to vendors against local regulations. Absent cities adopting a sidewalk vending program consistent with SB 946, sidewalk vendors are free to vend within the city so long as they vend in compliance with the provisions of SB 946 (codified at Government Code sections 51035 et seq.). SB 946 covers stationary or roaming sidewalk vendors selling food and merchandise from a non-motorized cart, stand, or their persons, on sidewalks and pedestrian paths. It **does not** apply to vehicular vendors such as food trucks or ice cream trucks. Cities **may not** regulate sidewalk vendors except through regulations that are consistent with SB 946 requirements.

Under SB 946, local government regulations must be directly related to objective health, safety, or welfare concerns aside from specifically enumerated statutory criteria. Particularly, local governments **may not** rely on "perceived community animus or economic competition" to regulate sidewalk vendors. To illustrate, the government may not prohibit sidewalk vendors to locate in front of businesses that sell similar food items or merchandise as the vendor in order to protect those businesses against competition. It is also important to note

that violation of sidewalk vendor regulations are only punishable by administrative fines specified under state law; local governments may not prosecute such violations as criminal offenses.

SB 946's requirements are briefly summarized below:

- **Impermissible Regulations**

- The City may not impose the following regulations under any circumstances:
 - Prohibit roaming sidewalk vendors (moving from place to place) to locate in exclusively residential areas.
 - Require sidewalk vendors to first obtain non-government consent or approval before doing business.
 - Criminalize violations of sidewalk vendor regulations or the failure to pay applicable fines.

- **Permissible Regulations**

- (1) The City may require vendors to comply with generally applicable laws, and to obtain a permit with application requirements.
- (2) The City may regulate time, place, and manner of sidewalk vending **that are directly related to objective health, safety or welfare concerns.** Examples of regulations that are permissible if based on such concerns include:
 - Restrict where sidewalk vendors can locate in the public right-of-way.
 - Restrict the overall number of sidewalk vendors permitted within the city.
 - Impose hours of operation, sanitation, and disability access requirements.
 - Require vendors to obtain additional governmental licenses and a state seller's permit.
- (3) The City may also prohibit vendors from locating next to a certified farmers' market, swap meet, or a temporary special event permit issued with notice, during the term of the permit.
- (4) The City may regulate sidewalk vendors in public parks, subject to specific statutory restrictions.

Proposed Amendments to the South San Francisco Municipal Code

The City of South San Francisco ("City") currently regulates street and sidewalk vending under Chapter 6.90 of the Municipal Code. The existing Chapter 6.90 only permits street vendors operating from a motorized vehicle to do business within the City pursuant to a vending permit. Under the current ordinance, sidewalk vending via non-motorized conveyances, such as a pushcart, stand, or wagon, are prohibited with the exception of certain temporary sidewalk sales held by organized merchant groups. These existing regulations under Chapter 6.90 are inconsistent with SB 946 requirements. Thus, staff has prepared the proposed ordinance to amend Chapter 6.90 consistent with SB 946 in order to impose regulations that aim to protect public health, safety and welfare.

The amended Chapter 6.90 would regulate three types of vendors: (1) street vendors, which are those vendors operating from a motorized vehicle (i.e. a food truck); (2) sidewalk vendors, which are those vendors operating from a non-motorized conveyance (i.e. a fruit stand) and located on *public sidewalks* and *public pedestrian paths only*; and (3) peddlers and solicitors, which are those that travel from place to place or house to house offering merchandise or services (i.e. a magazine subscription sales person), but not conducting businesses on a street or sidewalk or other public pathways.

The amended Chapter 6.90 will require these vendors to obtain a vending permit and comply with the requirements summarized below.

I. Vending Permit and Related Requirements

- Vending Permit
 - A permit is required of all vendors (including peddlers and solicitors).
 - Permit must be in the vendor's possession or displayed on vendor's vehicle, stand or other conveyance at all times, as applicable.
 - Permit may be revoked for false or misrepresenting facts on the application, multiple violations of Chapter 6.90, or failure to pay administrative fines.
 - The City's decision to revoke a permit is appealable to the City Manager.
- Business License
 - Required and must be in possession of, or display the permit on vendor's vehicle, stand or other conveyance at all times, as applicable.
- Permit Application
 - Requires name, mailing address, a California seller's permit, and description of merchandise to be offered. Acceptable form of identification includes driver's licenses, state or federal government-issued identification, or other photo I.D. issued by the U.S. or a foreign government.
 - **For peddlers and solicitors only:** must be fingerprinted and subject to background check.

II. Location and Distance Requirements

- Prohibited Locations
 - **Street and Sidewalk Vendors**
 - Any public property that is not legally open to the public as sidewalks, streets or pedestrian pathways (except for public parks).
 - Private property, unless with property owner's consent.
 - Within 200 feet of a farmer's market, swap meet, and an event subject to a City-issued special event or private event permit, during operation hours.
 - Within 500 feet of schools.
 - Within 50 feet of any street intersection, fire escape, fire hydrant, emergency call boxes, and utility cabinets.
 - Street vendors cannot vend in the same location for more than 30 minutes and must move to a location 200 feet away every 30 minutes. In exclusively residential zones, sidewalk vendors must do the same (thus, no stationary vendors are permitted).
 - **Peddlers and Solicitors**
 - Any private property that has a sign stating "No Peddlers or Solicitors" or words to that effect.
- Distance and Accessibility
 - Street and Sidewalk Vendors must:

- Be at least 50 feet from each other.
- Maintain a clear space at their location to allow pedestrians to pass.
- Not block any entrance/exits to a building, parking lot, residence, or other facility, or otherwise impede access thereto.
- Not obstruct pedestrian, on-street parking, emergency responder personnel or vehicular access.
- Not trespass or allow their vending activities to trespass on private property, or to create a noise, odor or sanitary nuisance for adjacent residents or occupants.
- Because of the nature of their operation, there are no particular distance requirements for peddlers and solicitors.

III. Public Safety, Health and Welfare Requirements

- Vending Equipment and Merchandise
 - Vending equipment may not:
 - Block or impede pedestrian or vehicular traffic.
 - Endanger pedestrians or property, or create a public or private nuisance (i.e. installing umbrellas or hanging wires, or using an open flame).
 - Attach to or lean against poles, street signs, bus stops, trashcans, or other public structure.
 - Be left unattended at any time.
 - Merchandise may not be stored in the streets/sidewalks, or on private property without owner's consent.
- Health and Sanitation
 - Vendors selling food must possess all required food handling and health permits and display them at all times.
 - Vendors are responsible for cleaning up trash and spills resulting from their business within a 50-foot radius, and must provide their own trash receptacle.
- Community Welfare
 - Vendors selling food must possess all required food handling and health permits and display them at all times.
 - Vendors are responsible for cleaning up trash and spills resulting from their business within a 50-foot radius, and must provide their own trash receptacle.
- Other Laws
 - Vendors must comply with all generally applicable federal, state, and local laws, including ADA standards, San Mateo County food safety codes, and other provisions of the SSF Muni Code.
- Additional Rules for Street Vendors (selling via vehicle)
 - Vehicles must be completely stopped and parked by the curb before the vendor can do business.
 - Vendors may only do business from the curbside of the parked vehicle.
 - Vendors must move to a location 200 feet away every 30 minutes.

IV. Special Rules for Parks

- Rules for Public Parks
 - Street vendors (operating from vehicles) are not permitted.
 - Roaming sidewalk vendors are permitted at all times. Stationary sidewalk vendors are permitted only if there is not a concessionaire agreement between the City and a third party for food or merchandise in the park.
 - Where permitted, sidewalk vendors may only sell from a sidewalk in the park or a paved/ marked pedestrian pathway. No selling from dirt, grass, sand, or parking lot permitted.
 - Vending cannot adversely affect the public's use and enjoyment of the park or unreasonably interfere with the scenic and natural character of the park.

V. Penalties for Violating Chapter 6.90

- **Applicable to All Vendors:**
 - Operating without a permit:
 - 1st offense: \$250
 - 2nd offense within one year of the first: \$500
 - Each additional offense within one year of the first: \$1,000
 - Violating Chapter 6.90 requirements (when vending with a permit):
 - 1st offense: \$100
 - 2nd offense within one year of the first: \$200
 - Each additional offense within one year of the first: \$500
 - Subsequent violations or failure to pay fines may constitute grounds for revocation of vending permit.
- **Applicable to Sidewalk Vendors only:**
 - Violations or failure to pay a fine is not punishable as a criminal offense.
 - A cited sidewalk vendor may request a determination from the City for their ability to pay the fines.
 - The City may allow the vendor to complete community service in lieu of paying the fine, waive the fine, or offer an alternative disposition.
 - Failure to pay fines or complete the alternative community service/disposition may constitute grounds for revoking a permit or deny a subsequent permit application.

Additional Changes to the Municipal Code

Staff notes that the penalties and provisions applicable to sidewalk vendors are replicated from SB 946 requirements and the City is otherwise preempted from enacting additional penalties. Thus, consistent with Chapter 6.90, staff recommends amending section 6.04.180 of the Municipal Code to exempt sidewalk vendors from criminal liability for violations relating to business licensing requirements.

Likewise, Section 6.16.110 of Chapter 6.16, relating to the imposition and payment of business license taxes, also contain certain regulations for peddlers and solicitors with which they must comply in order to obtain a license. Staff recommends that those regulations be consolidated with the amended Chapter 6.90 and Section

6.16.110 be modified accordingly.

FISCAL IMPACT

None. Staff has estimated that there would be little additional cost with enforcing the amended Chapter 6.90 regulations. It is anticipated that existing Finance and Police staff could absorb the additional work and any costs associated therewith.

CONCLUSION

Staff recommends that the City Council introduce an ordinance amending Title 6, Chapters 6.04, 6.16 and 6.90 of the South San Francisco Municipal Code pertaining to street and sidewalk vendor regulations and waive further reading.