
Senate Committee on Government Affairs

This measure may be considered for action during today's work session.

SENATE BILL 92

Revises provisions relating to sidewalk vendors. (BDR 20-53)

Sponsored By: Senators Doñate, Flores, and Ohrenschall and Assemblywomen Marzola, González, and Torres
Date Heard: March 1, 2023
Fiscal Notes: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

Senate Bill 92 creates requirements for the licensing and regulation of street food and merchandise vendors by the governing body of a county whose population is 100,000 or more (currently Clark and Washoe Counties) or a city in a county whose population is 100,000 or more. The bill also requires a local board of health to adopt certain regulations to allow a person applying for a permit to operate as a sidewalk vendor. Finally, the bill creates the Task Force on Safe Sidewalk Vending in the Office of the Secretary of State to review existing laws and recommend approaches to improve State and local laws governing sidewalk vending.

Amendments: There is one amendment proposed for this measure.

In addition to other changes described in the amendment, Senator Donáte proposes to amend the bill to do the following:

1. Revise certain definitions to exclude vendors who sell merchandise;
2. Limit restrictions on the hours of operation a sidewalk vendor may operate;
3. Limit vendors in Section 9 from operating in an area within a set distance to certain establishments, including food establishments, schools, childcare facilities, election polling places, religious institutions, pedestrian malls, and entertainment districts, among others;
4. Add penalties in Section 10 for failure to comply with certain ordinances, including suspension or revocation of a license and other civil penalties;
5. Require a local board of health in Sections 10.5 and 24.5 in a county and a city in a county with a population of 100,000 or more to adopt regulations regarding sidewalk vendors on or before January 1, 2024;
6. Revise the membership of the Task Force on Safe Sidewalk Vending and expand its duties to recommend approaches to improve the laws of the State, counties, and cities;
7. Authorize the Secretary of State to establish an advisory board to support the Task Force to support the uniformity of regulations across the State;
8. Prohibit sidewalk vendors in Section 25.5 from operating within 1,500 feet of a resort hotel, certain event facilities, convention facilities, and the Las Vegas Sign on Las Vegas Boulevard. This section also authorizes criminal enforcement or impoundment of equipment for operating in a prohibited area;
9. Add a severability clause in Section 28.5 regarding enforceability if certain provisions are held invalid or unenforceable; and
10. Revise the effective date with regard to the new sections proposed in the amendment.

PROPOSED AMENDMENT TO SB 92 – **AMENDED REWRITE 4/5**

Section 1. Chapter 244 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. *The provisions of sections **2 to 10.5 [10]**, inclusive, of this act apply only to a county whose population is 100,000 or more.*

Sec. 3. *As used in sections **2 to 10.5 [10]**, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4, 5 and 6 of this act have the meanings ascribed to them in those sections.*

Sec. 4. *“Roaming sidewalk vendor” means a sidewalk vendor who moves from place to place and stops only to sell food ~~[or merchandise]~~.*

Sec. 5. *“Sidewalk vendor” means a person who sells food ~~[or merchandise]~~ upon a public sidewalk or other pedestrian path from a nonmotorized conveyance, including, without limitation, a pushcart, stand, display, pedal-driven cart, wagon, showcase or rack. This term includes, without limitation, a roaming sidewalk vendor and a stationary sidewalk vendor.*

Sec. 6. *“Stationary sidewalk vendor” means a sidewalk vendor who sells food ~~[or merchandise]~~ from a fixed location.*

Sec. 7.

*Except as provided in **New Section 25.5:***

- 1. A board of county commissioners shall not:
 - (a) Enact or enforce a complete prohibition on sidewalk vendors except as provided in sections 2 to 10.5 of this act.*
 - (b) Impose a criminal penalty on the act of sidewalk vending in residential areas.**
- 2. A board of county commissioners may regulate the licensing or permitting of sidewalk vending by ordinance. If a board of county commissioners adopts an ordinance regulating sidewalk vendors, the ordinance must comply with the requirements of sections **2 to 10.5 [10]**, inclusive, of this act.*
- 3. A board of county commissioners that does not adopt an ordinance that complies or substantially complies with sections **2 to 10.5 [10]**, inclusive, of this act, shall not cite, fine or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the provisions of sections **2 to 10.5 [10]**, inclusive, of this act.*
- 4. Nothing in this section shall be construed to exempt a sidewalk vendor from compliance with any state or local laws or regulations and shall not be a defense to any other criminal act unrelated to the act of sidewalk vending.*

Sec. 8. *An ordinance adopted by a board of county commissioners regulating sidewalk vendors may require that a sidewalk vendor:*

1. Hold:

- (a) A permit or license for sidewalk vending;*
- (b) A state business license; and*
- (c) Any other licenses issued by a state or local governmental agency to the extent otherwise required by law.*

↪ Nothing in this section shall be construed to authorize a sidewalk vendor to not comply with any requirement to obtain a local permit or license, state business license or other license issued by a state agency to the extent otherwise required by law.

2. Submit information to the designated representative of the county relating to his or her operations, including, with limitation:

- (a) The name and current mailing address of the sidewalk vendor;*

- (b) If the sidewalk vendor is an agent of an individual, company, partnership or corporation, the name and business address of the principal office;
- (c) A description of the food ~~[or merchandise]~~ offered for sale; and
- (d) A certification by the sidewalk vendor that, to the best of his or her knowledge and belief, the information submitted pursuant to this section is true.

Sec. 9.

~~1. Except as otherwise provided in subsection 2, an ordinance adopted by a board of county commissioners that regulates sidewalk vendors must not:~~

- ~~(a) Require a sidewalk vendor to:

 - ~~(1) Operate within specific parts of the public right-of-way;~~
 - ~~(2) Obtain the consent or approval of any nongovernmental entity or individual before the sidewalk vendor may sell food or merchandise; or~~
 - ~~(3) Operate only in a designated neighborhood or area;~~~~
- ~~(b) Prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the county, unless the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire; or~~
- ~~(c) Restrict the overall number of sidewalk vendors permitted to operate within the county.~~

2. In addition to the provisions of section 8 of this act, an ordinance adopted by a board of county commissioners that regulates sidewalk vendors may:

1. ~~(a)~~ Adopt requirements regulating the time, place and manner of sidewalk vending if the requirements are objectively and directly related to the health, safety or welfare concerns of the public, which may include, without limitation:

(a) ~~(1)~~ Restrictions on the hours of operation of a sidewalk vendor, which may not be more restrictive than the local government's applicable noise ordinances and any other restrictions on home-based businesses or other businesses similar to sidewalk vending.

~~(1) The hours of operation of a sidewalk vendor, which may not be unduly restrictive. In a nonresidential area, any restriction on the hours of operation of a sidewalk vendor must not be more restrictive than any restriction on the hours of operation imposed on other businesses or uses on the same street.~~

~~(II) Sidewalk vending in a park owned or operated by the county if the restrictions are necessary to ensure the use and enjoyment by the public of natural resources and recreational opportunities or to prevent an unreasonable interference with the scenic and natural character of the park.~~

(b) ~~(2)~~ Requirements to:

(I) Maintain sanitary conditions and adhere to health and safety regulations adopted by a local board of health pursuant to sections 10.5 and 25 of this act.

(II) Ensure compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.

2. ~~(b)~~ Restrict or prohibit sidewalk vendors from operating:

(a) ~~(1)~~ In areas located within the immediate vicinity of a farmers' market licensed pursuant to NRS 244.337 during the operating hours of the farmers' market.

(b) ~~(2)~~ Within the immediate vicinity of an area designated for a temporary special event by the board of county commissioners, provided that any notice or other right provided to affected businesses or property owners during the temporary special event is also provided to any sidewalk vendors permitted to operate in the area, if applicable. A prohibition of sidewalk vendors pursuant to this paragraph must only be effective for the limited duration of the temporary special event.

(c) ~~(3)~~ Except as otherwise provided under New Section 25.5, within [Within] a set distance established by the board of county commissioners of an establishment that

holds a nonrestricted gaming license described in subsection 1 or 2 of NRS 463.0177.

- (d) ~~(4)~~ In areas that are zoned exclusively for residential use, but must not prohibit roaming sidewalk vendors in such areas.*
- (e) Within a set distance established by the board of county commissioners of a food establishment as defined by NRS 446.020.*
- (f) Within a set distance established by the board of county commissioners of a school, childcare facility, community center, election polling place, religious institution or place of worship, or park or recreational facility owned by a county.*
- (g) Within a set distance established by a board of county commissioners of a high pedestrian area, convention center or designated entertainment district. As used in this paragraph:*
 - (1) Pedestrian Mall -- Established in NRS 268.811, means an area including portions of one or more streets or alleys that has been set aside for use primarily by pedestrians and to which access by motor vehicles is prohibited or restricted. The term includes all improvements and appurtenances thereto that are designed to be used primarily for the movement, safety, convenience, enjoyment, entertainment, recreation or relaxation of pedestrians*
 - (2) Entertainment District means a contiguous area located in a part of a city, a municipality, or an unincorporated town that:*
 - (I) Is zoned for or customarily used for commercial purposes; and*
 - (II) Contains any number and any combination of restaurants, taprooms, taverns, entertainment establishments, music venues, theaters, bars, art galleries, art studios, athletic stadiums, tourist destinations, dance clubs, cinemas, or concert halls.*

~~(e) Establish a schedule of administrative fines for violations of the ordinance in accordance with the requirements of section 10 of this act.~~

~~3. For the purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety or welfare concern.~~

Sec. 10.

- 1. For a violation of an ordinance adopted pursuant to sections 8 or 9 by person who holds a license, permit or other authorization pursuant to section 10.5 of this act to operate as a sidewalk vendor, a board county commissioners or its designee may:*
 - (a) Suspend or revoke any authorization issued pursuant to section 10.5 this act for any violation of the ordinance, license or permit in the same manner applied to other types of businesses.*
 - (b) Impose a civil penalty on the holder of a license or permit to conduct sidewalk vending in a residential area for the violation of any conditions of the license or permit in accordance with the schedule of civil penalties set forth in the ordinance.*
 - (c) Impose a civil penalty for failure to obtain a license or permit to conduct sidewalk vending.*
 - (d) Take any other actions to prevent the sale or consumption of items that violate health and safety requirements imposed by the local board of health pursuant to regulations adopted under sections 10.5 or 25 of this act.*
- 2. For unlicensed sidewalk vending activity or for sidewalk vending in a prohibited area under an ordinance adopted pursuant to section 9, a local government may take any action authorized under existing law to enforce prohibitions on unlicensed business activity.*
- 3. Nothing in this section shall be construed to exempt any person from compliance with any state or local laws or regulations and shall not be a defense to any other criminal act unrelated to the act of sidewalk vending.*

~~1. Except as otherwise provided in subsection 2, in accordance with an ordinance adopted pursuant~~

~~to sections 2 to 10, inclusive, of this act, a board of county commissioners may impose an administrative fine on a sidewalk vendor not to exceed:~~

~~(a) For a first violation, \$100;~~

~~(b) For a second violation within 1 year of the first violation, \$200; and~~

~~(c) For a third or subsequent violation within 1 year of the first violation, \$500.~~

~~2. If a board of county commissioners requires a sidewalk vendor to obtain a permit for sidewalk vending, the board of county commissioners may, for a violation of the requirement to obtain the permit:~~

~~(a) Impose an administrative fine not to exceed:~~

~~(1) For a first violation, \$250;~~

~~(2) For a second violation within 1 year of the first violation, \$500; and~~

~~(3) For a third or subsequent violation within 1 year of the first violation, \$1,000; and~~

~~(b) Suspend or revoke a permit issued to a sidewalk vendor for the term of that permit upon a fourth or subsequent violation.~~

~~↳ Upon proof of a valid permit issued by the county, the administrative fines set forth in this subsection must be reduced to the administrative fines set forth in subsection 1.~~

~~3. No additional fines, fees, assessments or any other financial conditions beyond those authorized by this section may be imposed by ordinance. When imposing an administrative fine in accordance with the provisions of this section, the ability of the person to pay the fine must be taken into consideration. In lieu of paying an administrative fine, an ordinance adopted pursuant to sections 2 to 10, inclusive, of this act, must allow for:~~

~~(a) A person to complete community service in lieu of paying an administrative fine;~~

~~(b) The fine to be waived; or~~

~~(c) An alternative disposition.]~~

New Section 10.5

In addition to the regulations adopted pursuant to section 25 of this act, on or before January 1, 2024, a local board of health in a county whose population is 100,000 or more shall adopt regulations governing the operation and conduct of sidewalk vending pursuant to sections 2 to 10 of this act, including without limitation, a process for issuing a license, permit or similar authorization to operate as a sidewalk vendor.

Sec. 11 – no changes (amends NRS 244.335)

Sec. 12. Chapter 225 of NRS is hereby amended by adding thereto the provisions set forth as sections 13 and 14 of this act.

Sec. 13.

1. *The Task Force on Safe Sidewalk Vending is hereby created within the Office of the Secretary of State.*

2. *The Task Force consists of the following nine members appointed by the Secretary of State:*

(a) A representative of a health district in this State;

(b) A representative employed by a county or city whose primary duties are the performance of tasks related to the licensing of businesses [code enforcement or zoning];

(c) A representative from the gaming or restaurant industries in this State [who owns a small business in this State];

(d) A representative from law enforcement a rural area of this State;

(e) A representative from the Office of the Secretary of State; and

(f) Four members at large chosen by the Secretary of State, with a preference for sidewalk food vendors or community organizations that represent and are affiliated with sidewalk food vendors.

3. *The members of the Task Force:*

- (a) *Shall serve terms of 3 years. A member may be reappointed to the Task Force and any vacancy must be filled in the same manner as the original appointment.*
- (b) *Serve without compensation.*
- 4. *A majority of the members of the Task Force constitutes a quorum for the transaction of business, and a majority of these members present at the meeting is sufficient for any official action taken by the Task Force.*
- 5. ~~*As used in this section, "code enforcement" means the enforcement of laws, ordinances or codes regulating public nuisances or the public health, safety and welfare.*~~
The Secretary of State may establish an Advisory Board to support the actions of the Task Force. The Advisory Board may be composed of local county, city and business representatives, including members of the local health department or health district to support the uniformity of regulations across the state.
- 6. *The Task Force may accept funds to support outreach programming to support the implementation of this act.*

Sec. 14.

- 1. *The Task Force on Safe Sidewalk Vending created by section 13 of this act shall:*
 - (a) *Review the existing laws of this State, the cities and counties in this State and those of other states and municipalities relating to sidewalk vending; and*
 - (b) *Recommend approaches to improve the laws of this State and the cities and counties of this State to:*
 - (1) *Legalize sidewalk vending;*
 - (2) *Simplify and standardize the laws governing sidewalk vending;*
 - (3) *Remove unnecessary barriers to sidewalk vending; ~~and~~*
 - (4) *Protect the public health, safety and welfare by ensuring sidewalk vendors follow clear and narrowly tailored laws which address demonstrable health, safety and welfare risks; and*
 - (5) *Recommend approaches to improve the laws of this state, counties and cities to develop enforcement mechanisms which may include civil penalties for sidewalk vendors that operate in areas that have been prohibited by county or city jurisdictions.*
- 2. *On or before September 1 of each even-numbered year, the Task Force shall submit to the Director of the Legislative Counsel Bureau for submission to the Legislative Commission a written report. The report must include, without limitation, a summary of the work of the Task Force and any recommendations for legislation.*

....

Sections 15 to 24 – CITIES: Include same changes as illustrated in sections 2 to 10 for counties.

New Section 24.5

In addition to the regulations adopted pursuant to section 25 of this act, on or before January 1, 2024, a local board of health in a city in a county whose population is 100,000 shall adopt regulations governing the operation and conduct of sidewalk vending pursuant to sections 2 to 10 of this act, including without limitation, a process for issuing a license, permit or similar authorization to operate as a sidewalk vendor.

Sec. 25. Chapter 446 of NRS is hereby amended by adding thereto a new section to read as follows:

- 1. *On or before January 1, 2024, a [A] local board of health in a county whose population is 100,000 or more or a city in a county whose population is 100,000 or more shall adopt regulations pursuant to NRS 446.940 for sidewalk vendors of food which must, without limitation:*
 - (a) *Provide for a person applying for a permit for sidewalk vending to pay any fees required by the local board of health using a payment plan; and*

- (b) *Establish procedures for a person seeking to operate as a sidewalk vendor who does not have a drivers' license or identification card issued by this State or another State, the District of Columbia or any territory of the United States to obtain any certification required by the local board of health as a food handler.*
2. *As used in this section:*
- (a) *"Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to sell food.*
 - (b) *"Sidewalk vendor" means a person who sells food upon a public sidewalk or other pedestrian path from a nonmotorized conveyance, including, without limitation, a pushcart, stand, display, pedal-driven cart, wagon, showcase or rack. This term includes a roaming sidewalk vendor and a stationary sidewalk vendor.*
 - (c) *"Stationary sidewalk vendor" means a sidewalk vendor who sells food from a fixed location.*

New Section 25.5 (Chapter placement within NRS to be determined)

- 1. *In counties whose population is 100,000 or more, a person shall not sell food or merchandise upon a public sidewalk or other pedestrian path from a nonmotorized conveyance, including, without limitation, a pushcart, stand, display, pedal-driven cart, wagon, showcase or rack, within 1,500 feet of the property of:*
 - (a) *A resort hotel as defined under NRS 463.01865.*
 - (b) *An event facility that has a seating capacity of at least 20,000 people for an event and that is appropriately constructed to accommodate a major or minor league sports team.*
 - (c) *A convention facility operated by a county fair and recreation board.*
 - (d) *The Las Vegas Sign on Las Vegas Boulevard, Nevada*
- 2. *For any sidewalk vending activity, a local government may cite or take any criminal enforcement action authorized under existing law to enforce prohibitions for sidewalk vending activity in a prohibited area as outlined in subsection 1*
- 3. *A peace officer or local government impound equipment or goods reasonably believed to have been used in or associated with a violation of subsection 1.*

Sec. 26. Any ordinance, regulation or rule of a county or city which conflicts with the provisions of this act is void and unenforceable.

Sec. 27.

- 1. The provisions of sections 2 to 11, inclusive, and 15 to 24, inclusive, of this act apply to any pending criminal proceeding for a violation of an ordinance regulating the act of sidewalk vending. All pending criminal proceedings for a violation of such an ordinance or regulation shall be dismissed. Any person who is currently serving or who has completed a sentence, or who is subject to a criminal fine, for a conviction for the act of sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the provisions of sections 2 to 11, inclusive, and 15 to 24, inclusive, of this act may petition for dismissal of the sentence, fine or conviction.
- 2. Nothing in this section is intended to diminish or abrogate:
 - (a) Any rights or remedies otherwise available to a petitioner; or
 - (b) The finality of judgements in any case that does not fall within the provisions of sections 2 to 11, inclusive, and 15 to 24, inclusive, of this act.

Sec. 28. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

New Section 28.5

NRS 0.020 notwithstanding, should any provision of this act be held invalid or unenforceable the legislature declares that the remaining provisions of this act are deemed not to be severable from the invalid or unenforceable provision.

Sec. 29.

- 1. This section and sections 10.5, 24.5, 25, 25.5 and 26 to 28.5 [~~27 and 28~~] of this act become effective on October 15, 2023.

2. Sections 12, 13 and 14 of this act become effective:
 - (a) Upon passage and approval for the purpose of appointing members of the Task Force on Safe Sidewalk Vending and performing any other preparatory administrative tasks to carry out the provisions of sections 12, 13 and 14 of this act; and
 - (b) On January 1, 2024, for all other purposes.
3. Sections 1 to 10 and 11 [~~-, inclusive,~~] and 15 to 24 [~~25, inclusive,~~] of this act become effective on July [~~January~~] 1, 2024.

DRAFT