

December 8, 2016

Honorable Members of the City Council
C/O John White, Legislative Assistant
Los Angeles City Hall
200 N. Spring Street
Los Angeles, CA 90012

Re: Sidewalk Vending Policy - CF 13-1493

Dear Honorable Members:

The Los Angeles Street Vendor Campaign (LASVC) is pleased to comment on the November 22, 2016 Letter and Proposed Sidewalk Vending Policy Framework (“Proposed Framework”) submitted by Council members Buscaino and Price. We are encouraged by the renewed commitment to move forward with an ordinance to legalize street vending and end punitive criminalization at this critical moment in history. We appreciate this opportunity to provide input on the specific, important details of such an ordinance, and, for the reasons set forth below, believe that these changes are necessary to achieve the stated goals of the Proposed Framework.

The LASVC is a broad and diverse coalition of street vendors and over 65 organizations from across the city. Individually, our member organizations are leading experts in the fields of community development, immigrant rights, civil rights, public interest law, public health, municipal law, food equity, small business development, safe and vibrant streets, and economic development. Collectively, we work to protect the rights of street vendors and enhance economic opportunities for low-income entrepreneurs. To this end, we have worked directly with hundreds of vendors in all corners of the city to build leadership and strengthen networks. We have created and implemented a robust vendor-driven policy development process, culminating in a series of thoughtful and pragmatic policy recommendations. We have coordinated legal clinics and provided direct legal services to vendors enduring the unjust impacts of complete criminalization. We have created financial tools and technical assistance programs to promote and sustain vendor business development. In connection with all of this, we actively work to advance the creation of a comprehensive permit system to allow vending on City sidewalks and parks.

Our advocacy is fundamentally shaped by our belief that impacted low-income communities should be equal partners in the planning, policy development and implementation process. To this end, after several years of input and discussion, we developed a policy platform that incorporates the thoughtful input of hundreds of vendors and stakeholders, and which balances opportunity, fairness, safety and accessibility. The following comments derive from this platform, and are further shaped by a series of focused feedback sessions conducted with vendors over the last week. We appreciate your careful consideration.

1. Location

We strongly support the establishment of baseline, citywide standards with appropriate regulations to protect health and safety and enable flexibility. The Proposed Framework aptly recognizes the inadequacy of an opt-in district model. Such an approach is exclusionary, unresponsive to the issues this policy is meant to address, and already proven to fail in Los Angeles. Conversely, a comprehensive framework with built-in flexibility will maximize economic opportunity *and* better address safety and accessibility concerns. We urge the Council to support this recommendation and adopt a comprehensive program.

While we are supportive of the comprehensive scope of the Proposed Framework, we also recommend the following important changes to the location restrictions:

The ordinance should NOT include an across-the-board maximum of two vendors per block face. Two vendors per block may be appropriate for *some* streets. In fact, some streets might only safely accommodate one vendor, or even none. However, our major boulevards can safely accommodate more than two vendors per block face. An arbitrary limit fails to account for these variations. An arbitrary limit *is* a one-size-fits-all approach. Instead, the ordinance should rely on the location restrictions in the Proposed Framework (e.g. ADA compliance, spacing between other obstructions, clearance requirements). These spatial regulations already create a de-facto cap on the number of vendors that may legally operate on each street, but in a way that is driven by the unique safety and accessibility dynamics of that street. This ordinance should boost the entrepreneurship that drives our city forward. But a two-vendor-per-block face limit achieves the opposite. It is arbitrary, duplicative, unnecessary, and an unduly burdensome restraint on entrepreneurship.

The ordinance should NOT require that vendors obtain permission from an adjacent business. We believe that vendors and brick and mortar businesses can mutually thrive under a set of commonsense sidewalk regulations. This does not require conditioning approval of a vending permit on permission from an adjacent business. In addition to being an improper regulatory restraint on competition, such a requirement would be difficult to administer, and would place a disproportionate burden on the vendor-applicant. Moreover, we fear increased instances of exploitation and/or extortion of vendors would occur. That said, we respect the concerns expressed by some brick-and-mortar business operators, and we seek a policy that works for everyone. Neighboring brick-and-mortar businesses will already be protected by the ordinance's other health and safety restrictions on location, including a prohibition on blocking an entrance or obstructing access. Rather than economic protectionism, the appropriate concerns of this policy should be health, safety and accessibility.

The ordinance should clarify where stationary vending is permitted. We recommend that the ordinance allow permitted stationary vending in "non-exclusively-residential zones," so as to ensure that vending is permitted in mixed use areas, areas zoned Public Facilities, as well as Commercial and Industrial zones.

2. Enforcement & Criminal Penalties

We have consistently advocated for immediate decriminalization and the adoption of a permitting enforcement program that does not result in misdemeanor arrests or prosecutions. As we have laid out in heartbreaking detail in previous correspondence, the current practice of allowing misdemeanor prosecutions for street vending violations carries devastating immigration and citizenship status consequences, and heightens the risk of detention and deportation proceedings for immigrant vendors. As our City reaffirms and strengthens our commitment to inclusivity, we simply cannot continue to put vendors at greater risk. We wholeheartedly agree with the Letter's affirmation that "Council has a moral imperative to decriminalize vending by removing all misdemeanor penalties, and instead establish a graduated penalty structure." We strongly support these recommendations and urge the Council to adopt an ordinance that immediately decriminalizes violations of LAMC 42.00 *et seq* and avoids misdemeanor prosecution in a new permit program.

While we are pleased to see this commitment to a humane enforcement strategy, we also recommend the following important changes to the Proposed Framework:

A) Additional amendments are necessary to achieve immediate decriminalization.

The ordinance should immediately amend LAMC §42.00, §63.44(B)(3) and §80.73 to provide there be no criminal sanctions for violations of these code sections. Immediately decriminalizing violations of LAMC Section 42.00 *et. seq* is a very important step, which we enthusiastically support. However, vendors are routinely prosecuted under other sections of the municipal code, including LAMC §80.73 and LAMC §63.44(B)(3) (vending in parks), which still allows for misdemeanor prosecution. These sections should also be amended to clarify that there will be no criminal sanctions.

The ordinance should immediately strike subsection (e) of §11.2.11 of the Municipal Code, and immediately amend subsection (d) of § 11.2.01 of the Municipal Code to state that defendants who receive an administrative citation will not subsequently face criminal prosecution for the same instance. Vendors are increasingly being cited under the City's Administrative Citation Enforcement (ACE) program. As described below, the ACE program is intended as a non-criminal method of administering non-serious code violations. However, there are several flaws in the program that prevent it from truly being a non-criminal option. First, the ACE program plainly allows a vendor to be charged with a misdemeanor for failing to pay a fine on time. (LAMC §11.2.11(e)). Under the ACE program, a vendor may be provided as little as just 15 days to pay a citation (LAMC §11.2.11(a) - compared to the 90 days, plus available extensions, afforded a vendor in Superior Court) . Given the serious language access barriers and other challenges in rolling out this new program, vendors who miss a payment due to confusion or inadequate access to information could almost immediately be charged with a misdemeanor. This provision effectively makes it a crime to be poor and threatens to establish a modern day debtor's prison. Moreover, this provision is entirely unnecessary, as a number of other non-criminal penalties for non-payment are already included in the ordinance (LAMC §11.2.11 (a)-(d)). Additionally, the ACE program, inexplicably, does not guarantee that vendors cited under the program won't later be prosecuted criminally for the same violation. (LAMC §11.2.01(d)). This creates a "catch-22," and prevents the ACE program from providing any assurances that enforcement of vending rules will actually be decriminalized. These flaws must be fixed, immediately, in order for the ACE program to be a viable non-criminal option.

The Council should collaborate with the City Attorney to establish an amnesty program for pending and prior street vending convictions. Immediate decriminalization of the vending regulations in the Municipal Code is an important step. However, a number of vendors have been unjustly cited and prosecuted in the years that the City has imposed a complete criminal ban, and these vendors are unjustly vulnerable to the frightening consequences of proposed changes to federal immigration policy. We recommend that City Council, in collaboration with the City Attorney, establish an amnesty program with an accessible and reasonable process to dismiss pending and prior street vending convictions. We welcome the opportunity to speak with the appropriate city officials on how to best advance this important goal.

B) Additional changes are necessary to ensure a just, humane and effective enforcement program in the new sidewalk vending program.

The ordinance should clarify that vending violations will be administered through the ACE program, AFTER the City has adopted important reforms. The City's ACE program *could* provide an important non-criminal means to address street vending violations. However, as described above, certain fundamental flaws in the program prevent it from providing assurance that vending enforcement will not continue to be criminalized. The ACE program should be reformed to ensure

that low-income and monolingual residents do not face undue barriers to receiving an administrative hearing, and a defendant's ability to pay should be considered when setting fine amounts. Under no circumstances should a vendor be charged with a misdemeanor for failing to pay an ACE fine on time. We urge that the City address these and other flaws immediately, and enact meaningful reforms to the ACE program in order to more fairly and efficiently administer street vending regulations and other regulations that impact low-income communities. We also urge the City to create appropriate education and training for BSS, vendors and other stakeholders to ensure accountable, humane and effective enforcement of new vending regulations.

The graduated penalties should include a warning for a first offense. There will certainly be a period of time in which vendors will be coming up to speed on new requirements. In the interest of fairness, they should not be subject to a costly fine for a first offense.

The graduated penalties should NOT allow for confiscation of property. Confiscation of property is currently a serious issue in street vending enforcement, and the subject of at least one on-going lawsuit against the City. A vendor's equipment is their livelihood. Property seizure - which has proven to be a procedural and legal morass - is an ineffective and inappropriate deterrent. It is antithetical to the values of justice and economic mobility, and is inconsistent with an otherwise balanced and humane enforcement program.

3. Operational Requirements

We support reasonable operational requirements to promote accessible and dynamic public spaces, protect health and safety, and increase efficiencies in implementation. We support a requirement that vendors provide debris receptacles for customers. However, many vendors work before 7am and after 9pm in order to accommodate other pressures on their schedules, such as childcare and supplemental employment, and to cater to consumer preferences. In order for this program to be successful, hours of operation need to take into account where vending already occurs and avoid excluding vendors from the permit process. On non-residential zoned streets, vendors should have the same legal hours of operation as brick and mortar businesses in that area.

4. Special Vending Districts

Flexibility is an important ingredient in good public policy, and we understand the concerns with a "one-size-fits-all" approach. As described above, we believe that specific sidewalk spacing requirements are the opposite of a one-size-fits-all approach. These street-level regulations provide the best, most efficient means of accounting for variations across our public spaces. However, we also understand that certain areas may exhibit unique circumstances that justify further refining sidewalk vending regulations. If the ordinance creates a limited process to refine vending rules for a specific area, it should only be a tool to address demonstrable and unique local circumstances (rather than a tool for exclusion), and must include the following important safeguards:

A Special Vending District should not result in the complete exclusion or prohibition of sidewalk vending. While individual streets may exhibit unique dynamics that make vending unsafe or unworkable, a Special Vending District should not be a backdoor tool to "opt-out" of the City's program. If vending is deemed unworkable on a certain street, then a District should allow vending on an adjacent or nearby street that does not demonstrate the same constraints.

There must be a limit on the size and boundaries of any Special Vending District. Again, this process should not become a backdoor for special interests to cause entire communities to “opt-out” of a sidewalk vending program. Appropriate size limitations will ensure that Special Vending Districts are tailored to the specific issues they are intended to address.

There must be a process for vendors to initiate a Special Vending District. In the interest of equity, the ordinance should also enable vendors to initiate special rules. Some neighborhoods have embraced vending as a core element of a thriving cultural and economic hub. Vendors in these areas should have the same ability to initiate and structure a Special Vending District that reflects historical vending practices, provided they can demonstrate that the refined and more permissive rules will not negatively affect health, safety and welfare (see below).

The creation of Special Vending Districts should require City Council approval based on findings related to public health, safety and welfare. The Proposed Framework is silent on how Special Vending Districts would be approved. We strongly believe that deviation from the baseline rules should require City Council approval, with duly noticed opportunities for the public to weigh in on the boundaries, rules and processes being proposed. Approval of any Special Vending District should include findings that restrictions are necessary to promote health, safety and welfare, or that more permissive vending rules will not negatively affect health, safety, and welfare.

5. Permit Requirement and Notification

We encourage an accessible and inclusive permitting application process. We support the requirements outlined in the Proposed Framework regarding County Health permits, business tax registration, and liability insurance. In addition to what is already outlined in the Proposed Framework, we recommend the following additional clarifications:

The vending permit application should not inquire into an applicant’s immigration or citizenship status. The Proposed Framework reflects a commitment to protecting immigrant entrepreneurs in our City. To fully realize this commitment, the ordinance should clarify that the vending permit application process must not inquire into an applicant’s immigration or citizenship status.

Location requirements for food vending should be satisfied by submitting a valid County Health Permit Route Sheet. Food vendors are already required to fill out a route sheet when applying for a County Health permit. To avoid overlapping or duplicative requirements, the City should simply accept a copy of the approved County route sheet to establish vending location. A similar program could be established for merchandise vendors.

6. Business Improvement Districts

We hope this ordinance will result in increased cooperation and shared prosperity among vendors and brick and mortar businesses. We are eager to explore and support various strategies to make this happen. However, there are *many* legal and practical obstacles to charging vendors a fee to fund BID operations. For example, there are significant legal concerns and questions about the City’s ability to do this within the very strict constitutional confines of Proposition 26 and Proposition 218. These laws apply respectively to the proposed fees to vendors and to the assessment and legal structure of BIDs. We urge the City to consider alternative strategies to enhance collaboration between vendors and brick and mortar businesses.

7. Incentives for Healthy Foods

We have long championed a healthy food cart program. With such a program in place, the City can leverage our vending economy to help address disparities in healthy food access. We support providing special incentives to vendors who sell exclusively healthy food, including reduced or waived permit fees and special authorization to vend near schools. We recommend providing healthy food vendors with a right of first refusal for vending opportunities at City-sponsored events. We also recommend the City distinguish and support healthy food carts with signage and marketing support.

8. Education and Outreach

Significant education and outreach is necessary to maximize voluntary compliance and minimize the cost of enforcement. We support the creation of a bilingual education and outreach campaign, and recommend that the City partner with community based organizations in the creation and dissemination of education materials, and in the facilitation of outreach and engagement activities.

9. Automatic Comprehensive Review

We support routine implementation assessments to identify challenges and adopt program improvements as necessary.

10. Park vending

We submit these comments in response to the Proposed Framework for sidewalk vending – Council File 13-1493. As described above, we strongly support the adoption of a legal framework for vending on sidewalks and in city parks. Upon the adoption of a sidewalk vending policy, we urge the Council to move forward with a compatible permitting program for park vending, pursuant to the directives in Council File 13-1493-S2.

11. Urgency

The Proposed Framework makes the compelling case for immediate action. We agree. Vendors have suffered the consequences of unjust criminalization for too long, and they face too many risks from continued criminalization. We cannot afford, and must not accept, any further delay.

We are approaching a series of watershed moments for Los Angeles – opportunities to not only reaffirm, but *strengthen* our commitment to economic opportunity, inclusion, and racial, economic and social justice. At the end of the day, this commitment is reflected in our policies, not our rhetoric. Here is a chance to finally remove a broken, dysfunctional and unjust policy of criminalization, and replace it with a policy that builds on the diversity, creativity, and entrepreneurship in our communities. We urge the Council to consider the above recommendations, incorporate them into the recommended policy framework, and expeditiously approve the drafting and adoption of an ordinance to legalize sidewalk vending.

Sincerely,

The Los Angeles Street Vendor Campaign