



LEGISLATIVE ALERT: SB 972 - Sidewalk Food Vending

California Senate Bill 972 (“SB 972”) makes important changes to the California Retail Food Code (“CalCode”) relevant to the preparation and sale of food by sidewalk vendors and other compact mobile food operations (“CMFOs”). The law revises certain equipment requirements for CMFOs, streamlines permitting processes for CMFOs and the facilities that support them, and prohibits all criminal penalties for violations of CalCode by the operator of a CMFO. The law becomes effective January 1, 2023 and will require health enforcement agencies and local jurisdictions to adopt or amend certain regulations related to food facilities operating within their jurisdiction. This legislative alert is intended to provide information about the new law for cities, counties, food facility manufacturers, and other interested stakeholders.

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Legislative purpose.

Sidewalk vendors are a fixture in California’s communities and a part of the state’s vibrant culture. Sidewalk vending was decriminalized throughout California by SB 946 in 2019. However, California’s laws related to the sale of food were not updated at that time, and the ill-fitting regulations found therein made it nearly impossible for sidewalk vendors and other food-selling microbusinesses to comply, as those regulations were designed with restaurants and food trucks in mind. This left sidewalk vendors who sell food unable to secure a health permit from their relevant local regulatory agency - a permit which was treated as a prerequisite for most city business licenses. Without access to a health permit, sidewalk food vendors - many of whom are low-income immigrants - remained unable to formalize their business and subject to harassment, excessive fines, and even criminal prosecution for pursuing their livelihood.

The purpose of SB 972 is to revise the equipment, operational, and permitting requirements found in CalCode to more safely and realistically accommodate microbusinesses like sidewalk food vendors and bring entrepreneurs like sidewalk vendors into the formal economy. Specifically, the bill revises certain equipment requirements, expands certain permitted food preparation practices, streamlines permitting processes for sidewalk food vendors and the operators of commercial kitchen spaces that will be used to support sidewalk vendors, and decriminalizes violations of CalCode by sidewalk food vendors (existing criminal penalties are replaced with fines).

SB 972 does not change a local authority’s ability to regulate the time, place, and manner of sidewalk vending.

SB 972 does not make any changes to existing state laws (e.g. Government Code sections 51036-51039) that apply to programs adopted by a local authority like a city or county regulating the time, place, and manner in which sidewalk vending may be allowed, prohibited, or limited.

For any jurisdiction that already has sidewalk vending regulations that comply with existing state law, no further action is required. SB 972 does not make any changes to a local jurisdiction's ability to regulate sidewalk accessibility, waste disposal, littering, illegal dumping, or any other rules or regulations that fall outside of the purview of the California Retail Food Code (which only regulates the sale of food in California). SB 972 also does not make any changes to local jurisdictions' abilities to enforce those regulations..

A local authority that currently treats health permits as a prerequisite for a local business license or sidewalk vending permit may need to update its licensing requirements.

As a result of SB 972, sidewalk vendors and other compact mobile food operations with 25 square feet or less of display area that sell only bagged snacks, cans of soda, bottled water, whole fruits and vegetables, canned goods that do not need to be refrigerated, and other similar foods are no longer required to obtain a health permit from their local health enforcement agency. Many cities and counties currently require any business that sells food - including sidewalk vendors - to first obtain a health permit prior to applying for a local business license or vending permit that would allow them to conduct business in the jurisdiction. SB 972 creates a new exemption from health permitting requirements for compact mobile food operations that sell only (i) prepackaged food that is not potentially hazardous and (ii) whole produce. Any local business licensing or permitting programs that currently require food vendors to obtain a permit from their local health enforcement agency prior to applying for a business license should be updated to account for this new exemption.

SB 972 defines “Compact Mobile Food Operations” (CMFOs) and establishes a new chapter in CalCode with regulations that are specific to CMFOs.

SB 972 defines “compact mobile food operation” as a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

SB 972 changes the definition of “limited food preparation” to better align with food safety practices and allow more sidewalk vendors to obtain health permits to prepare a greater variety of foods.

Unenclosed mobile food facilities, a category that includes most sidewalk vendors and other compact mobile food operations, are permitted to conduct only “limited food preparation” under CalCode. SB 972 expands the definition of limited food preparation to include several common and safe food preparation activities, thereby allowing a sidewalk vendor or other compact mobile food operation to conduct those food preparation activities “in the field” rather than at a commissary. SB 972 adds the following activities to the definition of “limited food preparation,” among others:

1. Slicing and chopping of nonpotentially hazardous fruits and vegetables.
2. Pre-cooking food in an approved kitchen and “hot-holding” or “cold-holding” that food prior to service from a vending cart.
3. Re-heating food that was previously prepared in an approved kitchen.

SB 972 allows health departments to streamline the permitting process for CMFOs and kitchen spaces that wish to support them.

SB 972 makes a number of important changes to CalCode designed to facilitate a simpler and more streamlined permitting process both for sidewalk vendors and for the kitchen spaces used as commissaries to support sidewalk vendors and other small food businesses. These changes will facilitate greater synergy between local small businesses like restaurants and sidewalk vendors. Among others, these changes include the following:

1. Standard Plan Pre-Approval: SB 972 allows health departments to pre-approve standardized blueprints for vending carts, stands, racks, and other facilities designed for use as a compact mobile food facility. Operators using a facility that was constructed according to a pre-approved blueprint may now skip the plan submission phase of the permit application process and proceed directly to a final inspection to confirm that the facility conforms with pre-approved plans.
2. Reduced Testing Requirements: SB 972 exempts the operators of a compact mobile food operation from being required to obtain a certification required under current law (commonly called the “Food Manager Exam”), and instead requires these operators to obtain a food handler’s card - the standard food safety knowledge requirement for restaurant employees and other workers in the food retail industry.
3. Use of Existing Approved Kitchen Spaces: SB 972 requires local health agencies to approve existing permitted food facilities like restaurants that would like to rent kitchen space to sidewalk vendors to use as prep space. A local health enforcement agency can waive plan submission requirements for an already-permitted facility that would like to use its existing kitchen space to support compact mobile food operations.
4. Activation of Unused Community Kitchen Spaces: SB 972 allows local health departments to approve any kitchen facility for use as a commissary to support compact mobile food operations, even if that facility does not have an existing health permit, unless it finds that use of such a facility poses a public health hazard. Churches, schools, libraries, community centers, and other facilities with commercial grade kitchens can seek this approval to provide an approved space for sidewalk vendors to safely prepare food and store compact mobile food operation facilities like vending carts or stands.

SB 972 allows manufacturers and sidewalk vendors to build smaller and less expensive CMFOs (vending carts and stands) by reducing or revising certain equipment requirements applicable to these facilities.

1. Use of Auxiliary Handwashing and Warewashing Facilities: Current law requires most mobile food facilities to carry a three-compartment warewashing sink and a separate handwashing sink with the facility. SB 972 allows compact mobile food facilities to operate near an standalone sink facility (an “auxiliary sink conveyance”) to satisfy this requirement, instead having four sinks attached to the vending cart or stand.
2. Reduced Sink, Water Tank, and Water Heater Requirements: If a compact mobile food operation is not handling raw meat on site, SB 972 exempts them from the three-compartment warewashing sink requirement, allowing the operator to carry spare

utensils as an alternative. SB 972 also exempts these compact mobile food operations from the current requirement to have a water heater, and also allows these small facilities to operate with a smaller integral water tank.

3. **Integral Equipment:** SB 972 defines “integral,” for purposes of a compact mobile food facility, to mean both equipment that is permanently attached to the primary unit and equipment that is securely fastened to the primary unit. This will allow for the construction of modular carts with flexible cooking uses, carts that can be disassembled for transportation and cleaning, and carts that incorporate already-existing and approvable equipment that can be securely fastened to a cart without being permanently welded to the primary unit. This will decrease design and manufacturing costs for permissible compact mobile food facilities.

SB 972 relieves some of the pressure on California’s scarce commissary spaces by incorporating sidewalk vendors into existing home cooking regulations in limited scenarios.

1. **Safe Home Cooking and Cart Storage:** SB 972 allows a home that is being used as a cottage food operation or a microenterprise home kitchen operation to serve as a food preparation and storage space for a compact mobile food operation if the local health enforcement agency deems the home to have adequate facilities to support the compact mobile food operation. No more than two compact mobile food operations can be stored in a private home unless specifically approved by the local health department.
2. **Sales and Meal Caps:** SB 972 allows, but does not require, jurisdictions to forgo counting transactions from a compact mobile food operation towards the applicable meal and sales limits found in the current cottage food operation and microenterprise home kitchen operation regulations.

SB 972 decriminalizes violations of the California Retail Food Code by the operators of compact mobile food operations.

SB 972 aligns the enforcement mechanisms in CalCode that are applicable to sidewalk vendors and other compact mobile food operations with the enforcement mechanisms found elsewhere in California law by prohibiting the application of criminal penalties to a compact mobile food operation for a violation of CalCode. Instead of criminal penalties, SB 972 provides for a schedule of escalating fines for repeated violations. After January 1, 2024, local health enforcement agencies may issue a fine for operating without a health permit in an amount up to three times the cost of the applicable permit. A fine for a first offense must be reduced to no more than 20% of the original fine amount based upon the cited individual’s ability-to-pay, as determined by their income level.

Public Counsel recommends that local health enforcement agencies take immediate steps to ensure effective and equitable implementation of the changes to the California Retail Food Code in SB 972.

Health departments across California have an important role to play as the sidewalk vending industry continues to transition from the informal to the formal economy. As the agencies responsible for issuing health permits and regulating the sale of food, local health departments should ensure that sidewalk vendors and other small food businesses within their jurisdiction have access to the new openings for safe formalization of their businesses provided by SB 972. These actions should include, but are not limited to, the following:

1. Develop guidance documents regarding obtaining a health permit that are specific to Compact Mobile Food Operations and that incorporate the changes to the CalCode found in SB 972. These documents should use language accessible to laypeople and should be translated to multiple languages.
2. Conduct outreach to designers and manufacturers of vending carts and food stands to make sure they are aware of new standards and opportunities to submit vending facility blueprints for pre-approval, and develop clear processes for the submission of such plans.
3. Reduce permit fees to a level affordable to a microentrepreneur, and implement “pay over time” programs for permit and renewal fees so that lack of initial capital is no barrier to a microentrepreneur who is seeking a health permit.
4. Conduct outreach to permitted and unpermitted commercial grade kitchens within the jurisdiction to raise awareness of the new opportunities to be approved as commissaries that can support Compact Mobile Food Operations.
5. Discontinue any existing partnerships with armed law enforcement used to conduct enforcement sweeps and other code enforcement activities, and instead adopt an “education first” approach to environmental health protection that prioritizes bringing microentrepreneurs into formal systems of regulation instead of punishing them for operating outside of structures that have long been inaccessible to them.

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