

State Preemption in the New Economy for Food: Sidewalk Vending (SB 946) & Microenterprise Home Kitchen Operations (AB 626 & AB 377)

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Agenda

- Sidewalk Vending
 - What is it & Why is it Important?
 - Cities' Regulatory Options
 - Case Studies – Calabasas, West Hollywood, Los Angeles
- Microenterprise Home Kitchen Operations
 - What is a MEHKO (and what is it not)?
 - State Regulation & Preemption
 - Cities' Options Now



Sidewalk Vending

- A quintessential LA service industry
- Previously subject to prohibition or regulation by cities

New Legislation – SB 946



Senator Lara intended to:

1. Decriminalize sidewalk vending
2. Remove local regulatory barriers

Sidewalk Vending Decriminalization

- All sidewalk vending regulation is a civil matter, effective January 1, 2019.
- Limited Enforcement Tools & Fines
- Current criminal cases dismissed, and past prosecutions and convictions can be expunged.



City Regulatory Options

SB 946 defines three types:

1) Expressly Permitted

2) Prohibited

3) Optional

Expressly Permitted Regulations

- Residential Zones
- Near Permitted Special Events.
- Public Parks and Recreation Facilities
- Public Rights-of-way

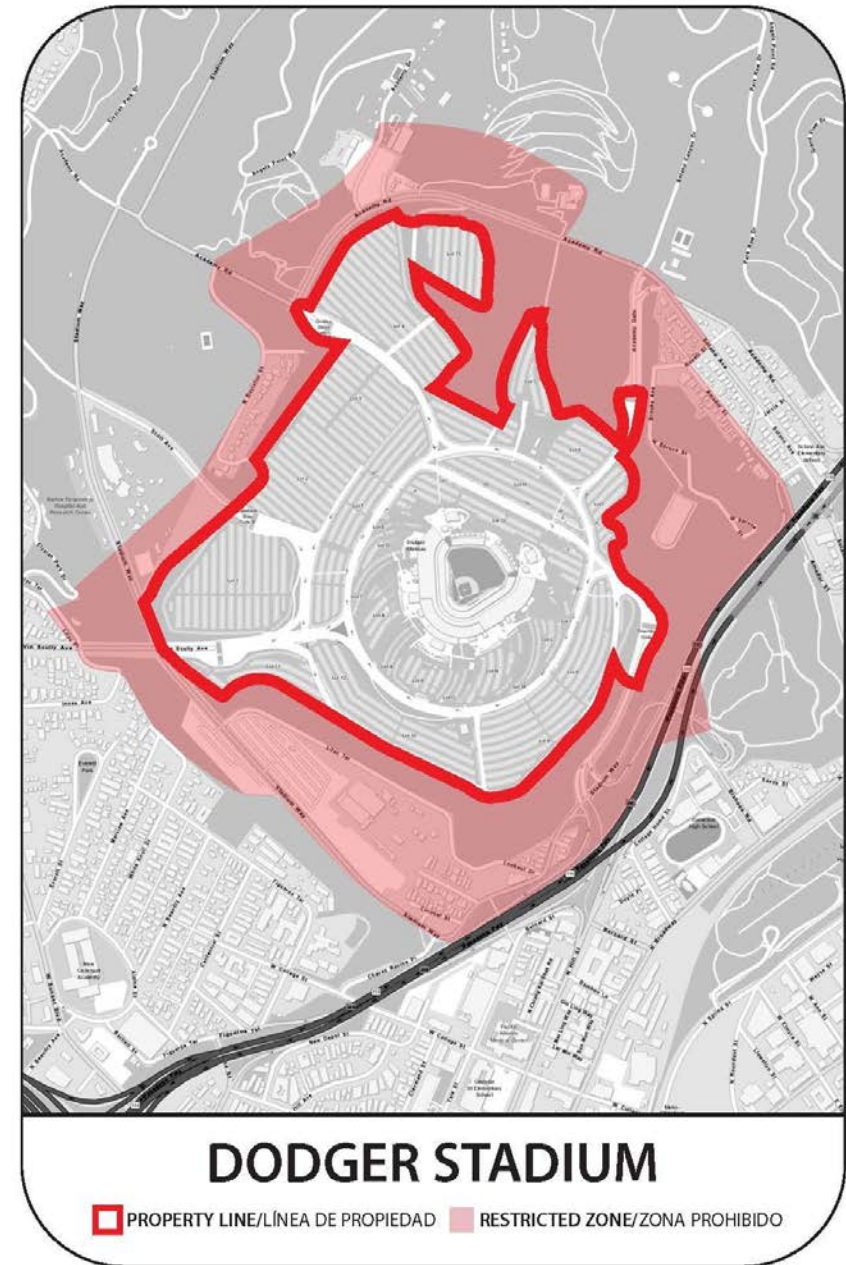
Prohibited Regulations

- Cannot regulate based on “perceived community animus or economic competition”
- Cannot require consent of residents or local businesses
- Cannot require non-governmental permits

Optional Regulations

Adopt findings for any optional regulations, such as:

- Criminal background checks
- Restricting vending locations
- Pedestrian and Disability access standards



Enforcement

- Criminal Enforcement Prohibited
- Civil fines set by table of maximum fines
- Reduced fines for violators of limited means

Case Study - Calabasas

- Requires annual vending permit from Public Works
- Accessibility
- Obstruction prohibited if sidewalk narrower than 6' adjacent to curb or slope over five percent
- Safety: Sanitation requirements, and prohibition on open flames or heat sources
- City permit must be displayed

Calabasas – Location Regulations

- **Residential zones:** stationary vending prohibited, mobile vending allowed from 9am to 5pm; all vending prohibited 10pm to 8am
- **Prohibited within 500'** of public and private schools for one hour before and after start and end of classes

Case Study – West Hollywood

- Prohibited in nightlife areas from 10:00 PM to 2:00 AM, avoiding overcrowding
- Prohibited within block of public and private schools from 8:00 AM to 5:00 PM
- Operating restrictions, e.g. minimum 25' distance from loading zones and valet and taxi stands

Case Study – Los Angeles

- Permit required after January 1, 2020 in some areas
- Other areas subject only to regulations
- Vending prohibited at all times within 500' of defined landmarks,
e.g. Walk of Fame, El Pueblo, and
Dodger Stadium on game days

Microenterprise Home Kitchen Operations (“MEHKOs”)

AB 626 & AB 377

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What is a MEHKO?

- A “food facility” under CalCode
- Operated out of a private residence
- Where food may be prepared, sold, and served directly to consumers

Removing Legal Barriers

AB 626

“It is the intent of the Legislature that this act authorize the use of home kitchens for small-scale, direct food sales by home cooks to consumers, providing appropriate flexibility in food types and appropriate health and sanitation standards.”

What is a MEHKO?

- “Potentially hazardous foods”
- Onsite dining, take-out, or delivery
- Food demonstrations & Cooking classes

What is it not?

- Not a cottage food operation
- Not a catering operation
- Not a full-scale restaurant



Microenterprise operations

- Direct sales to consumers
- No more than 30 individual meals/day
- No more than 60 individual meals/week.
- Operations limited to annual sales of \$50,000

Counties Opt In

Internet Food Service Intermediaries

- Online platforms for MEHKOs
- Registered with the California Department of Public Health
- Report bad actors to enforcement agencies

Preemption

- No restrictions “for zoning purposes”
- A MEHKO is a permitted use if it
 - Does not post signage
 - Complies with local noise ordinances

Home Occupations in the Sharing Economy

Cities' Options Now

- Nuisance ordinances
- Business license for revenue purposes
- Work with the County!

Removing Legal Barriers

Questions?

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