

# STATE OF NEW YORK

6817

2019-2020 Regular Sessions

## IN SENATE

October 28, 2019

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general city law, in relation to the regulation of street vendors

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general city law is amended by adding a new section  
2 18-e to read as follows:

3 § 18-e. Street vendors. 1. For the purposes of this section, the  
4 following definitions apply:

5 a. "Street vendor" means a person who sells food or merchandise from a  
6 pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or  
7 other nonmotorized conveyance, or from one's person, upon a public  
8 street, sidewalk or other pedestrian path.

9 b. "Roaming street vendor" means a street vendor who moves from place  
10 to place and stops only to complete a transaction.

11 c. "Stationary street vendor" means a street vendor who vends from a  
12 fixed location.

13 d. "Local legislative body" means the legislative body of a city.

14 2. a. A local legislative body shall not regulate street vendors  
15 except in accordance with subdivision three or four of this section.

16 b. Nothing in this section shall be construed to affect the applica-  
17 bility of any laws, rules, or regulations pertaining to food safety to a  
18 street vendor who sells food.

19 c. Nothing in this section shall be construed to require a local  
20 legislative body to adopt a new program to regulate street vendors if  
21 the local legislative body has established an existing program that  
22 substantially complies with the requirements of this section.

23 3. a. A local legislative body may adopt a program to regulate street  
24 vendors in compliance with this section.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 b. A local legislative body's street vending program shall comply with  
2 all of the following standards:

3 (i) A local legislative body shall not require a street vendor to  
4 operate within specific parts of the public right-of-way, except when  
5 such restriction is directly related to objective health, safety, or  
6 welfare concerns.

7 (ii) (A) A local legislative body shall not prohibit a street vendor  
8 from selling food or merchandise in a park owned or operated by the  
9 city, except the local legislative body may prohibit stationary street  
10 vendors from vending in the park only if the operator of the park has  
11 signed an agreement for concessions that exclusively permits the sale of  
12 food or merchandise by the concessionaire.

13 (B) Notwithstanding clause (A) of this subparagraph, a local legisla-  
14 tive body may adopt additional requirements regulating the time, place,  
15 and manner of street vending in a park owned or operated by the city if  
16 the requirements are any of the following:

17 (1) Directly related to objective health, safety, or welfare concerns;

18 (2) Necessary to ensure the public's use and enjoyment of natural  
19 resources and recreational opportunities; or

20 (3) Necessary to prevent an undue concentration of commercial activity  
21 that unreasonably interferes with the scenic and natural character of  
22 the park.

23 (iii) A local legislative body shall not require a street vendor to  
24 first obtain the consent or approval of any nongovernmental entity or  
25 individual before he or she can sell food or merchandise.

26 (iv) (A) A local legislative body shall not restrict street vendors to  
27 operate only in a designated neighborhood or area, except when that  
28 restriction is directly related to objective health, safety, or welfare  
29 concerns.

30 (B) Notwithstanding clause (A) of this subparagraph, a local legisla-  
31 tive body may prohibit stationary street vendors in areas that are zoned  
32 exclusively residential, but shall not prohibit roaming street vendors.

33 (v) A local legislative body shall not restrict the overall number of  
34 street vendors permitted to operate within the jurisdiction of the local  
35 legislative body, unless the restriction is directly related to objec-  
36 tive health, safety, or welfare concerns.

37 c. A local legislative body may, by law, ordinance or resolution,  
38 adopt additional requirements regulating the time, place, and manner of  
39 street vending if the requirements are directly related to objective  
40 health, safety, or welfare concerns, including, but not limited to, any  
41 of the following:

42 (i) Limitations on hours of operation that are not unduly restrictive.  
43 In nonresidential areas, any limitations on the hours of operation for  
44 street vending shall not be more restrictive than any limitations on  
45 hours of operation imposed on other businesses or uses on the same  
46 street;

47 (ii) Requirements to maintain sanitary conditions;

48 (iii) Requirements necessary to ensure compliance with the federal  
49 Americans with Disabilities Act of 1990 (Public Law 101-336) and other  
50 disability access standards;

51 (iv) Requiring the street vendor to obtain from the local legislative  
52 body a permit for street vending or a valid business license, provided  
53 that the local legislative body issuing the permit or business license  
54 accepts a New York driver's license or identification number, an indi-  
55 vidual taxpayer identification number, or a municipal identification  
56 number in lieu of a social security number if the local legislative body

1 otherwise requires a social security number for the issuance of a permit  
2 or business license, and that the number collected shall not be avail-  
3 able to the public for inspection, is confidential, and shall not be  
4 disclosed except as required to administer the permit or licensure  
5 program or comply with a state law or state or federal court order;

6 (v) Requiring the street vendor to possess a valid seller's permit or  
7 license;

8 (vi) Requiring additional licenses from other state or local agencies  
9 to the extent required by law;

10 (vii) Requiring compliance with other generally applicable laws; or

11 (viii) Requiring a street vendor to submit information on his or her  
12 operations, including, but not limited to, any of the following:

13 (A) The name and current mailing address of the street vendor;

14 (B) A description of the merchandise offered for sale or exchange;

15 (C) A certification by the vendor that to his or her knowledge and  
16 belief, the information contained on the form is true;

17 (D) The New York state tax number, if any, of the street vendor; or

18 (E) If the street vendor is an agent of an individual, company, part-  
19 nership, or corporation, the name and business address of the principal.

20 d. Notwithstanding paragraph b of this subdivision, a local legisla-  
21 tive body may do both of the following:

22 (i) Prohibit street vendors in areas located within the immediate  
23 vicinity of a permitted certified farmers' market during the limited  
24 operating hours of that certified farmers' market.

25 (ii) Restrict or prohibit street vendors within the immediate vicinity  
26 of an area designated for a temporary special permit issued by the local  
27 legislative body, provided that any notice, business interruption miti-  
28 gation, or other rights provided to affected businesses or property  
29 owners under the local legislative body's temporary special permit are  
30 also provided to any street vendors specifically permitted to operate in  
31 the area, if applicable. For the purposes of this subparagraph, a tempo-  
32 rary special permit is a permit issued by the local legislative body for  
33 the temporary use of, or encroachment on, the street, sidewalk, or other  
34 public area, including, but not limited to an encroachment permit,  
35 special event permit, or temporary event permit, for purposes including,  
36 but not limited to, filming, parades, or outdoor concerts. A prohibition  
37 of street vendors pursuant to this subparagraph shall only be effective  
38 for the limited duration of the temporary special permit.

39 e. For the purposes of this section, perceived community animus or  
40 economic competition shall not constitute an objective health, safety,  
41 or welfare concern.

42 4. a. (i) A violation of a local legislative body's street vending  
43 program that complies with subdivision three of this section is punisha-  
44 ble only by the following:

45 (A) A fine not exceeding one hundred dollars for a first violation.

46 (B) A fine not exceeding two hundred dollars for a second violation  
47 within one year of the first violation.

48 (C) A fine not exceeding five hundred dollars for each additional  
49 violation within one year of the first violation.

50 (ii) A local legislative body may rescind a permit issued to a street  
51 vendor for the term of that permit upon the fourth violation or subse-  
52 quent violations.

53 (iii) (A) If a local legislative body requires a sidewalk vendor to  
54 obtain a street vending permit from the local legislative body, vending  
55 without a street vending permit may be punishable by the following in  
56 lieu of the fines set forth in subparagraph (i) of this paragraph:

1 (1) A fine not exceeding two hundred fifty dollars for a first  
2 violation.

3 (2) A fine not exceeding five hundred dollars for a second violation  
4 within one year of the first violation.

5 (3) A fine not exceeding one thousand dollars for each additional  
6 violation within one year of the first violation.

7 (B) Upon proof of a valid permit issued by the local legislative body,  
8 the fines set forth in this paragraph shall be reduced to the fines set  
9 forth in subparagraph (i) of this paragraph, respectively.

10 b. The proceeds of a fine assessed pursuant to paragraph a of this  
11 subdivision shall be deposited in the general fund of the local legisla-  
12 tive body.

13 c. Failure to pay a fine pursuant to paragraph a of this subdivision  
14 shall not be punishable as an infraction or misdemeanor. Additional  
15 fines, fees, assessments, or any other financial conditions beyond those  
16 authorized in paragraph a of this subdivision shall not be assessed.

17 d. (i) A violation of a local legislative body's street vending  
18 program that complies with subdivision three of this section, or a  
19 violation of any rules or regulations adopted prior to the effective  
20 date of this section, that regulate or prohibit street vendors in the  
21 jurisdiction of a local legislative body, shall not be punishable as an  
22 infraction or misdemeanor, and the person alleged to have violated any  
23 such provisions shall not be subject to arrest except when permitted  
24 under law.

25 (ii) Notwithstanding any other law to the contrary, subparagraph (i)  
26 of this paragraph shall apply to all pending criminal prosecutions under  
27 any law, ordinance or resolution regulating or prohibiting street  
28 vendors. Any such criminal prosecutions that have not reached final  
29 judgment shall be dismissed.

30 e. A local legislative body that has not adopted rules or regulations  
31 by law, ordinance or resolution that comply with subdivision two of this  
32 section shall not cite, fine, or prosecute a street vendor for a  
33 violation of any law, rule or regulation that is inconsistent with the  
34 standards described in paragraph b of subdivision three of this section.

35 f. (i) When assessing a fine pursuant to paragraph a of this subdivi-  
36 sion, the adjudicator shall take into consideration the person's ability  
37 to pay the fine. The local legislative body shall provide the person  
38 with notice of his or her right to request an ability-to-pay determi-  
39 nation and shall make available instructions or other materials for  
40 requesting an ability-to-pay determination. The person may request an  
41 ability-to-pay determination at adjudication or while the judgment  
42 remains unpaid, including when a case is delinquent or has been referred  
43 to a comprehensive collection program.

44 (ii) The local legislative body may allow the person to complete  
45 community service in lieu of paying the total fine, may waive or reduce  
46 the fine, or may offer an alternative disposition.

47 g. (i) A person who is currently serving, or who completed, a  
48 sentence, or who is subject to a fine, for a conviction of a misdemeanor  
49 or infraction for street vending, whether by trial or by open or negoti-  
50 ated plea, who would not have been guilty of that offense under the act  
51 that added this section had that act been in effect at the time of the  
52 offense, may petition for dismissal of the sentence, fine, or conviction  
53 before the trial court that entered the judgment of conviction in his or  
54 her case.

55 (ii) Upon receiving a petition under subparagraph (i) of this para-  
56 graph, the court shall presume the petitioner satisfies the criteria in

1 subparagraph (i) of this paragraph unless the party opposing the peti-  
2 tion proves by clear and convincing evidence that the petitioner does  
3 not satisfy the criteria. If the petitioner satisfies the criteria in  
4 subparagraph (i) of this paragraph, the court shall grant the petition  
5 to dismiss the sentence or fine, if applicable, and dismiss and seal the  
6 conviction, because the sentence, fine, and conviction are legally  
7 invalid.

8 (iii) Unless requested by the petitioner, no hearing is necessary to  
9 grant or deny a petition filed under subparagraph (i) of this paragraph.

10 (iv) If the court that originally sentenced or imposed a fine on the  
11 petitioner is not available, the presiding judge shall designate another  
12 judge to rule on the petition.

13 (v) Nothing in this paragraph is intended to diminish or abrogate any  
14 rights or remedies otherwise available to the petitioner.

15 (vi) Nothing in this paragraph or related provisions is intended to  
16 diminish or abrogate the finality of judgments in any case not falling  
17 within the purview of this section.

18 § 2. This act shall take effect immediately.