STATE OF NEW YORK

5081

2021-2022 Regular Sessions

IN ASSEMBLY

February 10, 2021

Introduced by M. of A. GONZALEZ-ROJAS -- read once and referred to the Committee on Cities

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:

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

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

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

b. "Local legislative body" means the legislative body of a city.

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

b. Nothing in this section shall be construed to affect the applicability of any laws, rules, or regulations pertaining to food safety to a street vendor who sells food.

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

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

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

(i) A local legislative body shall not require a street vendor to operate within specific parts of the public right-of-way, except when

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

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such restriction is directly related to objective health, safety, or welfare concerns.

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

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

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

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

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

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

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

(B) Notwithstanding clause (A) of this subparagraph, a local legislative body may not prohibit stationary or roaming street vendors in areas that are zoned exclusively residential.

(v) A local legislative body shall not restrict the overall number of street vendors permitted to operate within the jurisdiction of the local legislative body.

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

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

(ii) Requirements to maintain sanitary conditions;

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

(iv) Requiring the street vendor to obtain from the local legislative body a permit for street vending or a valid business license, provided that the local legislative body issuing the permit or business license accepts a New York driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local legislative body otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order;

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

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

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

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

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

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

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

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

(E) If the street vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

d. Notwithstanding paragraph b of this subdivision, a local legislative body may restrict or prohibit street vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local legislative body, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local legislative body's temporary special permit are also provided to any street vendors specifically permitted to operate in the area, if applicable. For the purposes of this paragraph, a temporary special permit is a permit issued by the local legislative body for the temporary use of, or encroachment on, the street, sidewalk, or other public area, including, but not limited to an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of street vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

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

4. All enforcement and inspection of this section shall be carried out by the health officer of a city with a population of fifty thousand or more, the commissioner of health or health officer of a county or part-county health district, the state regional health director or area director having jurisdiction, a grade I or grade II public health administrator qualified and appointed pursuant to 10 NYCRR Part 11, a public health director or any county health director having all the powers and duties prescribed in section three hundred fifty-two of the public health law. The health commissioner or health officer of a city with a population of fifty thousand or more, or the health commissioner or health officer of a county or part-county health district, or such grade I or grade II public health administrator or public health director or county health director may designate the director of environmental health of such district; and the state regional health director or area director may designate the district director as additional persons authorized to enforce and perform inspections pursuant to this section.

5. a. (i) A violation of a local legislative body's street vending program that complies with subdivision three of this section is punishable only by the following:

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

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

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

(ii) A local legislative body may rescind a permit issued to a street vendor for the term of that permit upon serious repeated and persistent violations of any of the requirements of subdivision three of this section, and after notice and an opportunity for a hearing has been provided by the permit-issuing official.

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

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

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

(3) A fine not exceeding four hundred dollars for each additional violation within one year of the first violation.

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

b. The proceeds of a fine assessed pursuant to paragraph a of this subdivision shall be deposited in the general fund of the local legislative body.

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

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

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

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

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

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

g. (i) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor

or infraction for street vending, whether by trial or by open or negotiated plea, who would not have been guilty of such offense under this section had this section been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(ii) Upon receiving a petition under subparagraph (i) of this paragraph, the court shall presume the petitioner satisfies the criteria in subparagraph (i) of this paragraph unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subparagraph (i) of this paragraph, the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

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

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

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

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

§ 2. This act shall take effect immediately.