

California Court of Appeal Partially Invalidates Sidewalk Vending Ordinance

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ATTORNEYS

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An ordinance that permits confiscation of a sidewalk vendor's items, or imposes hours of operation different than apply to nearby businesses, violates state law.

In 2022, the City of San Diego adopted a sidewalk vending ordinance with regulations meant to comply with the limitations imposed by Senate Bill 946 (2018). The regulations included restrictions on hours of operation in a 40-block area surrounding Petco Park. The ordinance also required sidewalk vendors to indemnify the City as a condition of receiving a permit, and it authorized the impoundment of vending equipment and goods in numerous circumstances. During 2024, a sidewalk vendor was cited for violations of the regulations, including the ballpark district hours restrictions, even though nearby businesses were allowed to operate during the restricted hours. Further, his goods and money were twice impounded.

In *Mustaqeem v. City of San Diego*, the California Court of Appeal interpreted Government Code Sections 51038(c) and 51039 for the first time. Section 51038(c) allows local agencies to regulate operating hours of sidewalk vendors in non-residential areas provided that the regulations are not more restrictive than operating hours limits imposed on other businesses on the same street. Section 51039 sets forth administrative penalties and prohibits local agencies from imposing additional fines, fees, assessments, or financial conditions. The Court ruled that the City's hours restrictions and impoundment authorization directly conflicted with these statutes. However, the Court upheld the City's indemnification requirement for sidewalk vendors.

Public agencies with ordinances that set more restrictive operating hours or that authorize the impoundment of equipment and goods from violators should review and revise those provisions in light of this decision.

For further guidance concerning sidewalk vending regulations, please contact **D. Craig Fox** or anyone in **RWG's Public Law Department**.