

# House Bill 2568

Sponsored by Representative HERNANDEZ; Representatives PHAM, RUIZ (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits local government regulation of operations of sidewalk vendors except in compliance with provisions of Act. Provides that local governments may not regulate certain aspects of operations of sidewalk vendors unless regulation directly addresses objective concerns about public health, safety or welfare. Permits regulation of certain operations of sidewalk vendors under specified circumstances.

Permits only specified punishments for violations of local government regulations. Provides that punishments for violations of local government regulations that do not comply with provisions of Act must be rescinded, reversed, commuted or set aside, as appropriate.

## A BILL FOR AN ACT

1  
2 Relating to sidewalk vendors.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in sections 1 to 5 of this 2021 Act:**

5 (a) **"Local government" has the meaning given that term in ORS 174.116.**

6 (b) **"Mobile vendor" means a sidewalk vendor who moves from place to place, stopping**  
7 **only to complete a transaction.**

8 (c) **"Sidewalk vendor" means a person who uses a pushcart, stand, display, pedal-driven**  
9 **cart, wagon, showcase, rack or other conveyance or only the person's body as a means to**  
10 **sell food or merchandise on a public sidewalk or pedestrian path.**

11 (d) **"Temporary special use permit" means a permit that a local government issues for**  
12 **the purpose of allowing uses of or encroachments onto sidewalks, streets or other public**  
13 **areas for purposes that include, but are not limited to, filming, parades or outdoor concerts.**

14 (2) **For the purposes of sections 1 to 5 of this 2021 Act, regulation that responds to per-**  
15 **ceived community animus or economic competition is not regulation that directly addresses**  
16 **objective concerns about public health, safety or welfare.**

17 **SECTION 2. (1) Except as otherwise provided in this section, a local government may not**  
18 **enact an ordinance, resolution, rule or other legislative measure that regulates the oper-**  
19 **ations of sidewalk vendors except in accordance with sections 1 to 5 of this 2021 Act.**

20 (2) **The prohibition described in subsection (1) of this section does not apply to:**

21 (a) **A local government ordinance, resolution, rule or legislative measure that regulates**  
22 **public health or safety and that applies to persons who sell food; or**

23 (b) **A restriction, limitation or prohibition on the operations of sidewalk vendors in the**  
24 **immediate vicinity of:**

25 (A) **A farmer's market or swap meet during the hours in which the farmer's market or**  
26 **swap meet is in operation; or**

27 (B) **An area that is subject to a temporary special use permit for the period of time**  
28 **during which the temporary special use permit is in effect, except that to the extent the local**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 government provides any notice, business interruption mitigation or other rights to busi-  
 2 nesses or property owners affected by the temporary special use permit, the local govern-  
 3 ment shall provide the same or similar notice, business interruption mitigation or other  
 4 rights to sidewalk vendors that ordinarily operate in the area that is subject to the tempo-  
 5 rary special use permit.

6 (3) Sections 1 to 5 of this 2021 Act do not require a local government to enact a new  
 7 regulatory program for sidewalk vendors if the local government has enacted an existing  
 8 regulatory program that substantially complies with sections 1 to 5 of this 2021 Act.

9 **SECTION 3.** (1) Except as otherwise provided in this section, a local government by or-  
 10 dinance, resolution, rule or other legislative measure may not, with respect to sidewalk  
 11 vendors:

12 (a) Require operations within a specific part of a public right-of-way, a specific neigh-  
 13 borhood or a designated area unless the requirement directly addresses objective concerns  
 14 about public health, safety or welfare, except that the local government may prohibit side-  
 15 walk vendors from operating stationary facilities within neighborhoods that are zoned for  
 16 exclusive residential use, but may not restrict or prohibit mobile vendors from selling food  
 17 or merchandise in residential neighborhoods.

18 (b) Prohibit sales of food or merchandise within a public park that the local government  
 19 owns or operates, except that:

20 (A) If an exclusive agreement between a local government and a concessionaire prohibits  
 21 other persons from operating stationary vending facilities within the public park, the local  
 22 government may prohibit sidewalk vendors that operate a stationary facility from operating  
 23 the stationary facility within the public park; and

24 (B) The local government may specify times, places and manners in which sidewalk ven-  
 25 dors sell food or merchandise if the specifications are necessary to:

- 26 (i) Directly address objective concerns about public health, safety or welfare;
- 27 (ii) Ensure public access to and use and enjoyment of natural resources and recreational  
 28 opportunities within the boundaries of the public park; or
- 29 (iii) Prevent a concentration of commercial activity that unreasonably interferes with the  
 30 scenic and natural character of the public park.

31 (c) Require the consent, permission or approval of any individual or entity, other than a  
 32 public body as defined in ORS 174.109, for the sidewalk vendor to sell food or merchandise in  
 33 public rights-of-way.

34 (d) Limit or restrict the number of sidewalk vendors within the local government's ju-  
 35 risdiction unless the limitation or restriction directly addresses objective concerns about  
 36 public health, safety or welfare.

37 (2) A local government by ordinance, resolution, rule or other legislative measure may  
 38 regulate the following aspects of a sidewalk vendor's operations if the regulation directly  
 39 addresses objective concerns about public health, safety or welfare:

40 (a) Hours of operation. The local government may set hours of operation that are not  
 41 unduly restrictive and, in nonresidential areas, are not more restrictive than hours of oper-  
 42 ation permitted for businesses or uses on the same street.

43 (b) Sanitary conditions. The local government may require sidewalk vendors to comply  
 44 with applicable sanitary regulations.

45 (c) Access for individuals with disabilities. The local government may require compliance

1 with the federal Americans with Disabilities Act of 1990 (P.L. 101-336) and otherwise appli-  
 2 cable regulations and standards for access by individuals with disabilities.

3 (d) Permits for operation. The local government may require sidewalk vendors to obtain,  
 4 possess and display upon request a permit or license from the local government. The local  
 5 government must accept from an applicant for a permit or license a driver license,  
 6 government-issued identification or taxpayer identification number in lieu of a Social Secu-  
 7 rity number if the local government otherwise requires a Social Security number from an  
 8 applicant. The local government shall maintain the confidentiality of the identification the  
 9 applicant provides and may not disclose the identification except as necessary to administer  
 10 the local government permit program or to comply with the laws of this state or with a state  
 11 or federal court order.

12 (e) Taxation. The local government may require a sidewalk vendor, as a condition of ob-  
 13 taining or retaining a permit or license, to comply with all applicable tax laws.

14 (f) Additional licenses. The local government may require a sidewalk vendor to obtain and  
 15 maintain other licenses or permits from state or local agencies to the extent required under  
 16 applicable law.

17 (g) Information about operations. The local government may require a sidewalk vendor  
 18 to submit information about the sidewalk vendor's operations and to certify that to the best  
 19 of the sidewalk vendor's knowledge and belief the information submitted is accurate and  
 20 true. The information may include, but is not limited to:

- 21 (A) The sidewalk vendor's name and current address;
- 22 (B) A description of the food or merchandise the sidewalk vendor sells or offers for sale;
- 23 (C) The numbers of any licenses or permits the sidewalk vendor currently holds and the  
 24 names of the agencies that issued the licenses or permits; and
- 25 (D) The name and address of any principal for which the sidewalk vendor is an agent.

26 **SECTION 4.** (1) A local government may not punish a violation of a local government  
 27 ordinance, resolution, rule or other legislative measure that regulates the operations of  
 28 sidewalk vendors unless the regulatory program complies with the requirements of sections  
 29 1 to 5 of this 2021 Act.

30 (2) A local government may punish violations of an ordinance, resolution, rule or other  
 31 legislative measure that regulates the operations of sidewalk vendors in compliance with  
 32 sections 1 to 5 of this 2021 Act only by:

- 33 (a) Imposing a fine of not more than \$100 for a first violation;
- 34 (b) Imposing a fine of not more than \$200 for a second violation that occurs within one  
 35 year after a first violation;
- 36 (c) Imposing a fine of not more than \$500 for each additional violation that occurs within  
 37 one year of a previous violation; or
- 38 (d) Revoking any license or permit for engaging in business as a sidewalk vendor that the  
 39 local government issued to the violator if the violation is a forth or subsequent violation.

40 (3) If a local government requires a permit or license to engage in business as a sidewalk  
 41 vendor, the local government may, in lieu of the punishments set forth in subsection (2) of  
 42 this section, punish a person who engages in business as a sidewalk vendor without the re-  
 43 quired permit or license only by:

- 44 (a) Imposing a fine of not more than \$250 for a first violation;
- 45 (b) Imposing a fine of not more than \$500 for a second violation that occurs within one

1 year after the first violation;

2 (c) Imposing a fine of not more than \$1,000 for each additional violation that occurs  
3 within one year of the previous violation.

4 (4) A local government shall reduce the fines set forth in subsection (3) of this section  
5 to the corresponding fines set forth in subsection (2) of this section if the person subject to  
6 the fine provides proof of possessing a valid permit or license from the local government.

7 (5) In imposing a fine under subsection (2) or (3) of this section, a local government shall  
8 take into account a person's ability to pay the fine and shall provide the person with notice  
9 of the right to request a determination of the person's ability to pay and forms and in-  
10 structions necessary to apply for the determination. The person may request a determination  
11 as to the person's ability to pay the fine at any time before payment is due. If the local  
12 government determines that paying the fine will create an undue hardship for the person,  
13 the local government shall accept a payment of 20 percent of the amount of the fine as full  
14 satisfaction of the amount due.

15 (6)(a) A local government may not arrest or impose any criminal liability upon a person  
16 that violates an ordinance, resolution, rule or other legislative measure that regulates the  
17 operations of sidewalk vendors or for failing to pay a fine the local government imposes un-  
18 der this subsection.

19 (b) A local government may not impose any fines, fees, assessments or other financial  
20 conditions for a violation of an ordinance, resolution, rule or other legislative measure that  
21 regulates the operations of sidewalk vendors other than the fines set forth in subsections (2)  
22 and (3) of this section.

23 (c) In lieu of the fines set forth in subsection (2) or (3) of this section, a local government  
24 may permit a person to complete community service. The local government may, at the local  
25 government's discretion, waive or reduce a fine or may offer an alternative disposition for  
26 a violation.

27 (7) The local government shall deposit into the local government's treasury the proceeds  
28 of any fine the local government imposes under this section.

29 **SECTION 5.** (1) To the extent that a person is subject to a fine or to criminal liability for  
30 violating a local government ordinance, resolution, rule or other legislative measure that  
31 regulates the operations of sidewalk vendors but does not comply with sections 1 to 5 of this  
32 2021 Act, the local government shall rescind the fine and a court shall dismiss any pending  
33 criminal charges.

34 (2) If a person is subject to a fine or is serving or has completed a sentence following a  
35 conviction for violating an ordinance, resolution, rule or other legislative measure that reg-  
36 ulates the operations of sidewalk vendors but does not comply with sections 1 to 5 of this  
37 2021 Act, and if the person would not have been subject to the fine or sentence had the local  
38 government's ordinance, resolution, rule or other legislative measure complied with sections  
39 1 to 5 of this 2021 Act, the person may petition the administrative body that imposed the fine  
40 or the court that imposed the sentence to rescind the fine, to reverse the conviction or to  
41 set aside or commute the sentence.

42 (3) An administrative body or court that receives a petition described in subsection (2)  
43 of this section shall presume that the petitioner qualifies for a rescission of the fine, a re-  
44 versal of the conviction or a commutation or setting aside of the sentence and shall grant  
45 the proposed relief without requiring a hearing unless a party that opposes the petition

1 **proves by clear and convincing evidence that the petition does not allege a proper ground for**  
2 **relief.**

3 **(4) This section does not diminish or abrogate:**

4 **(a) Any rights or remedies a petitioner might otherwise have under law; or**

5 **(b) The finality of a judgment in a case that is not subject to sections 1 to 5 of this 2021**  
6 **Act.**

7

---