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that punishments for violations of local government regulations that do not comply with provisions of Act must be rescinded, reversed, commuted or set aside, as appropriate.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

Relating to sidewalk vendors.

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

SECTION 1. (1) As used in sections 1 to 5 of this 2021 Act:
(a) “Local government” has the meaning given that term in ORS 174.116.
(b) “Mobile vendor” means a sidewalk vendor who moves from place to place, stopping only to complete a transaction.
(c) “Sidewalk vendor” means a person who uses a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack or other conveyance or only the person’s body as a means to sell food or merchandise on a public sidewalk or pedestrian path.
(d) “Temporary special use permit” means a permit that a local government issues for the purpose of allowing uses of or encroachments onto sidewalks, streets or other public areas for purposes that include, but are not limited to, filming, parades or outdoor concerts.
(2) For the purposes of sections 1 to 5 of this 2021 Act, regulation that responds to perceived community animus or economic competition is not regulation that directly addresses objective concerns about public health, safety or welfare.

SECTION 2. (1) Except as otherwise provided in this section, a local government may not enact an ordinance, resolution, rule or other legislative measure that regulates the operations of sidewalk vendors except in accordance with sections 1 to 5 of this 2021 Act.
(2) The prohibition described in subsection (1) of this section does not apply to:
(a) A local government ordinance, resolution, rule or legislative measure that regulates public health or safety and that applies to persons who sell food; or
(b) A restriction, limitation or prohibition on the operations of sidewalk vendors in the immediate vicinity of:
(A) A farmer’s market or swap meet during the hours in which the farmer’s market or swap meet is in operation; or
(B) An area that is subject to a temporary special use permit for the period of time during which the temporary special use permit is in effect, except that to the extent the local
government provides any notice, business interruption mitigation or other rights to businesses or property owners affected by the temporary special use permit, the local government shall provide the same or similar notice, business interruption mitigation or other rights to sidewalk vendors that ordinarily operate in the area that is subject to the temporary special use permit.

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

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

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

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

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

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

(i) Directly address objective concerns about public health, safety or welfare;

(ii) Ensure public access to and use and enjoyment of natural resources and recreational opportunities within the boundaries of the public park; or

(iii) Prevent a concentration of commercial activity that unreasonably interferes with the scenic and natural character of the public park.

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

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

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

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

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

(c) Access for individuals with disabilities. The local government may require compliance
with the federal Americans with Disabilities Act of 1990 (P.L. 101-336) and otherwise applicable regulations and standards for access by individuals with disabilities.

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

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

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

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

(A) The sidewalk vendor's name and current address;

(B) A description of the food or merchandise the sidewalk vendor sells or offers for sale;

(C) The numbers of any licenses or permits the sidewalk vendor currently holds and the names of the agencies that issued the licenses or permits; and

(D) The name and address of any principal for which the sidewalk vendor is an agent.

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

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

(a) Imposing a fine of not more than $100 for a first violation;

(b) Imposing a fine of not more than $200 for a second violation that occurs within one year after a first violation;

(c) Imposing a fine of not more than $500 for each additional violation that occurs within one year of a previous violation; or

(d) Revoking any license or permit for engaging in business as a sidewalk vendor that the local government issued to the violator if the violation is a forth or subsequent violation.

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

(a) Imposing a fine of not more than $250 for a first violation;

(b) Imposing a fine of not more than $500 for a second violation that occurs within one year of a previous violation; or
year after the first violation;

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

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

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

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

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

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

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

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

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

(3) An administrative body or court that receives a petition described in subsection (2) of this section shall presume that the petitioner qualifies for a rescission of the fine, a reversal of the conviction or a commutation or setting aside of the sentence and shall grant the proposed relief without requiring a hearing unless a party that opposes the petition
proves by clear and convincing evidence that the petition does not allege a proper ground for
relief.

(4) This section does not diminish or abrogate:
(a) Any rights or remedies a petitioner might otherwise have under law; or
(b) The finality of a judgment in a case that is not subject to sections 1 to 5 of this 2021
Act.