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ORDINANCE NUMBER O- 21775 (NEW SERIES)

DATE OF FINAL PASSAGE FEB 28 2024

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 6, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING AND AMENDING SECTION 36.0101, AMENDING SECTIONS 36.0102 AND 36.0105, RETITLING AND AMENDING SECTION 36.0107, AMENDING SECTIONS 36.0108, 36.0110, 36.0111, AND 36.0113, AND RETITLING AND AMENDING SECTION 36.0114; AMENDING CHAPTER 5, ARTICLE 4, DIVISION 1 BY AMENDING SECTIONS 54.0105 AND 54.0122; AMENDING CHAPTER 5, ARTICLE 7, DIVISION 00 BY REPEALING SECTIONS 57.10 AND 57.10.1; AMENDING CHAPTER 6, ARTICLE 3, DIVISION 00 BY RETITLING AND AMENDING SECTION 63.20.20; AMENDING CHAPTER 6, ARTICLE 3, DIVISION 1 BY AMENDING SECTION 63.0102; AND AMENDING CHAPTER 6, ARTICLE 3 BY ADDING NEW DIVISION 5 AND NEW SECTIONS 63.0501, 63.0502, 63.0503, 63.0504, 63.0505, AND 63.0506, ALL RELATING TO SIDEWALK VENDING, COMMERCIAL ACTIVITY, AND EXPRESSIVE ACTIVITIES ON PUBLIC PROPERTY.

WHEREAS, California Government Code sections 51036 through 51039, which decriminalized sidewalk vending and limited cities and counties ability to regulate sidewalk vendors to requirements in the state law or otherwise directly related to objective health, safety, or welfare concerns, became effective on January 1, 2019; and

WHEREAS, in response to these state law amendments, the Council of the City of San Diego (Council) adopted Sidewalk Vending Regulations in San Diego Ordinance O-21459 (May 23, 2022) amending Chapter 3, Article 6, Division 1 of the San Diego Municipal Code to address objective health, safety, and welfare concerns and regulations in parks and beaches, to ensure the public's use and enjoyment of natural resources and recreational opportunities, and to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of these parks and beaches; and

WHEREAS, the City has observed a need for impounding procedures and increased enforcement measures to address vendors who disregard the Sidewalk Vending Regulations and operate in a manner that disrupts public safety, obstructs sidewalk access, or creates unsanitary conditions; and

WHEREAS, including a process for immediate impound of vendor equipment provides an enforcement tool to address vendors who refuse to comply with the Sidewalk Vending Regulations to the detriment of public health, safety, and welfare; and

WHEREAS, the City's parks, plazas, and sidewalks have served as a traditional forum for performances, visual artists, and other expressive activity; and

WHEREAS, unregulated expressive activity has led to challenges for first responders to access emergency situations, has intensified competing interests in available space and increased the incidents of physical altercations among sidewalk vendors and persons engaged in expressive activity, and has limited the accessibility of common walkways and the safe flow of pedestrian and vehicular traffic in some areas; and

WHEREAS, certain parks, plazas, and high-traffic areas constitute major tourist attractions, hosting significant numbers of people annually and containing limited geographic space where visitors, tourists, sidewalk vendors, and people engaged in expressive activity compete for space; and

WHEREAS, the City seeks to adopt regulations that protect rights guaranteed by the First Amendment to the United States Constitution and the California Constitution, while balancing the City's interests in public safety, order, and accessibility of sidewalks, parks, and beaches; and

WHEREAS, the Council finds that authorizing the City Manager to designate areas for expressive activities using equipment or furniture will reduce tensions associated with competing for limited space, will ensure people engaged in expressive activity have designated areas to engage their intended audiences without having to compete with commercial vendors, and will reduce the incidents of physical altercations, and designating expressive activity areas in areas where the proliferation of commercial activity potentially interferes with the historic and cultural opportunities and preservation activities will protect and preserve the nature of these areas for everyone; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 6, Division 1 of the San Diego Municipal Code is amended by retitling and amending section 36.0101, amending sections 36.0102 and 36.0105, retitling and amending section 36.0107, amending sections 36.0108, 36.0110, 36.0111, and 36.0113, and retitling and amending section 36.0114, to read as follows:

§36.0101 Title and Purpose

- (a) Title. This Division shall be known as the Sidewalk Vending Regulations.
- (b) Purpose and Intent. It is the purpose and intent of this Division to provide for the regulation of sidewalk vendors on public property pursuant to California Government Code sections 51036 through 51039. The Council finds and declares that these regulations are directly related to objective health, safety, and welfare concerns created by competing uses of

sidewalks by residents, visitors, and sidewalk vendors. The Council further finds and declares that regulations on sidewalk vending in City parks and beach areas are necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities and are necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the parks and beach areas.

§36.0102 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply:

Above-ground structure through *Ballpark District* [No change in text.]

Beach area has the same meaning as in section 63.20 of this Code.

Best management practices through *Encroachment Permit* [No change in text.]

Expressive Activity has the same meaning as in section 63.0502 of this Code.

Gaslamp Quarter District through *Major transit stop* [No change in text.]

Park has the same meaning as in section 63.0102(b) of this Code.

Permittee through *Portable cooking equipment* [No change in text.]

Public right-of-way through *School* [No change in text.]

Services are activities involving the performance of work for others or the provision of intangible items directly to a person or to a group of people at the same time that cannot be returned once they are provided. Examples include hair styling, massage, yoga, exercise classes, and dog training.

Sidewalk [No change in text.]

Sidewalk vendor means a person who sells *goods* or provides *services* from *vending equipment* or from one's person upon a *sidewalk*. It includes both *roaming sidewalk vendors* and *stationary sidewalk vendors*.

Stationary sidewalk vendor through *Summer moratorium* [No change in text.]

Vend or *vending* means with respect to any *goods* or *services*, to sell, offer to sell, expose or display for sale, solicit offers to purchase, barter, or require someone to negotiate, establish, or pay a fee before providing *goods* or *services*, even if characterized as a donation, on a public street, alley, highway, parking lot, *sidewalk*, or *public right-of-way*.

Vending equipment means any *conveyance*, table, stand, display, showcase, rack, or any other free-standing equipment used for *vending* on the *sidewalk*.

Vending permit [No change in text.]

§36.0105 Sidewalk Vending Generally

(a) through (g) [No change in text.]

(h) Sidewalk vendors engaged in the vending of food or beverages shall display a valid San Diego County Environmental Health Permit and have hand sanitizer located in a conspicuous location readily available for use by customers.

(i) [No change in text.]

(j) No *vendor* shall *vend* to any person traveling in a motor vehicle along a public roadway. *Vending* in or from a parked vehicle is addressed in section 54.0122.

(k) through (l) [No change in text.]

- (m) To maintain accessibility standards, *sidewalk vendors* shall not place or allow any obstruction to be placed on the *sidewalk* that would reduce the width of the *sidewalk* to less than 48 inches excluding the curb, except for the brief duration of time for a *roaming sidewalk vendor* to conduct a sale. Notwithstanding the foregoing, *sidewalk vendors* shall immediately move to provide access to the *sidewalk* to avoid impeding the flow of pedestrian or other traffic.
- (n) [No change in text.]
- (o) *Sidewalk vendors* shall not engage in or offer to engage in any type of rental activity, including the rental of any *goods* or *services*.
- (p) through (u) [No change in text.]

§36.0107 Vending in Parks, Plazas, and Beach Areas

The following provisions apply in *parks, plazas, and beach areas*. Where the following provisions are more restrictive than those set forth in section 36.0106, *sidewalk vendors* shall comply with the more restrictive provisions:

- (a) *Sidewalk vendors* shall stop *vending* before the designated closing time of the *park, plaza, or beach area*.
- (b) *Vending* is permitted between 8:00 a.m. and sunset in *parks, plazas, and beach areas* where there is no designated closing time.
- (c) [No change in text.]
- (d) *Sidewalk vendors* shall not *vend* within 25 feet of any decorative fountain, statue, monument, memorial, or art installation.

- (e) Subject to applicable law, the City Manager is authorized to enact rules and regulations to prohibit *vending* in any space that would obstruct, damage or otherwise adversely affect the public's use and enjoyment of natural resources and recreation opportunities or contribute to an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of a *park*.
- (f) *Stationary sidewalk vendors* are not permitted within any area of a *park* or *plaza* if the *park* or *plaza* operator has signed an agreement for concessions that exclusively permits the sale of *goods* or *services* by a specified concessionaire, provided that notice by signage or other means is provided to the *stationary sidewalk vendor*.
- (g) [No change in text.]
- (h) Consistent with applicable law, the City Manager has the authority to reasonably limit the number of *sidewalk vendors* in certain *parks* by requiring *sidewalk vendors* to obtain an additional park sales permit to *vend* in the following locations: Balboa Park, Mission Bay Park, Ocean Beach Park, Mission Beach Park, Kellogg Park, Ocean Boulevard Park, Ellen Browning Scripps Park, South Mission Beach Park, and Torrey Pines City Park.
- (i) *Vending* is prohibited during the *summer moratorium* in Balboa Park, Mission Bay Park, and the Shoreline Parks, which are those *parks* contiguous to the shoreline or beach in the communities of Ocean Beach, Mission Beach, Pacific Beach, and La Jolla.
- (j) through (k) [No change in text.]

§36.0108 Sidewalk Vending Equipment and Goods

- (a) [No change in text.]
- (b) *Sidewalk vendors* shall not:
 - (1) through (4) [No change in text.]
 - (5) set up customer seating areas.
 - (i) *Sidewalk vendors* may only have a chair for personal use.
 - (ii) *Sidewalk vendors* that do not serve food or beverages may use tables only for *vending* purposes, such as conducting transactions or displaying *goods* for sale.
 - (iii) *Sidewalk vendors* that serve food or beverages must conduct all *vending* from a permitted *conveyance* in accordance with their health permit from the County Department of Environmental Health and Quality.
- (c) through (f) [No change in text.]

§36.0110 Penalties and Fines

- (a) Any violation of this Division by a *sidewalk vendor* holding a valid *vending permit* shall be subject to the following:
 - (1) an administrative citation and \$100 penalty for a first violation.
 - (2) through (3) [No change in text.]
- (b) Any *sidewalk vendor* found *vending* without a *vending permit*, if required pursuant to this Division, shall immediately cease *vending* and be subject to the following:
 - (1) an administrative fine of \$250 for a first violation.

- (2) through (3) [No change in text.]
- (c) If a *sidewalk vendor* who was fined for vending without a *vending permit* provides proof of a valid *vending permit* issued by the City that is applicable on the date of the violation, the administrative fines shall be reduced to the administrative fine schedule set forth in section 36.0110(a).
- (d) [No change in text.]

§36.0111 Impounding of Vending Equipment

- (a) The City may impound *vending equipment* and any *goods* therein, for any of the following reasons:
- (1) leaving *vending equipment* or *goods* unattended in violation of section 36.0105(k);
 - (2) ~~*vending prohibited goods* in violation of section 36.0109;~~
 - (3) *vending* without a valid *vending permit* in violation of section 36.0110(b);
 - (4) *vending* food without a valid and displayed San Diego County Environmental Health Permit in violation of section 36.0105(h);
 - (5) *vending* in violation of this Division and the *sidewalk vendor* refuses or fails to provide identification upon request by an Enforcement Official;
 - (6) *vending* in apparent violation of this Division and the *sidewalk vendor* refuses or fails to remove the *vending equipment* from the *sidewalk, park, or other property* within 30 consecutive minutes after being instructed to do so by an Enforcement Official;

- (7) *vending* in a manner that blocks or obstructs the free movement of pedestrians or other traffic on *sidewalks* and fails to maintain a minimum of 48 inches of accessible path of travel in violation of section 36.0105(m);
 - (8) *vending* in a manner that creates an imminent and substantial danger or environmental hazard to the health, safety, or general welfare of the public or the property at the location of the *vending equipment*. Examples include discharge of oil, grease, or other slippery substance without any effort to maintain best management practices; using unapproved portable cooking equipment, heating element, gas-fueled appliance, generator, or any open flame; using cooking equipment without a fire extinguisher; or *vending* during urgent or emergency public safety events or incidents; or
 - (9) *vending* by a *sidewalk vendor* who has, within a 24-month period, been issued three or more administrative citations for violations of this Division.
- (b) *Vending equipment* or *goods* that are evidence of a crime or booked as property after arrest of a *sidewalk vendor* for violation of any local, state, or federal laws or regulations, excluding this Division, may be impounded in accordance with San Diego Police Department's applicable policies and procedures.
 - (c) The City may immediately dispose of impounded *goods* that cannot be safely stored or that are perishable.

- (d) Any owner of impounded *vending equipment* or any *goods* may, within 10 days, request an administrative hearing before a hearing officer appointed by the City.
- (e) The City Manager shall provide the person from whom the *goods* or *vending equipment* were taken with a receipt and instructions for retrieval of the impounded items, excluding any items that were disposed of according to section 36.0111(c). The receipt and instructions shall either be given to the person from whom the items were taken at the time of impound or shall be mailed within two business days of the impound to the address received by the City when the person applied for a *vending permit*.
- (f) Impounded *vending equipment* and *goods*, excluding any items that were disposed of according to section 36.0111(c), will be released to the *sidewalk vendor* or owner provided that proper proof of ownership is presented, and the City receives payment in full of all administrative costs incurred as a result of the violation. Any unclaimed items will be considered abandoned and forfeited to the City after 90 days following impoundment.

§36.0113 Non-Applicability

The following persons, entities, or activities are exempt from the requirements of this Division:

- (a) any person engaged in *expressive activity* authorized by Chapter 6, Article 3, Division 5 of this Code;

- (b) agencies of any federal, state, or local governments;
- (c) any person engaged in commercial activity or providing *services* in *parks* authorized by section 63.0102(c)(14); and
- (d) any lessee or permittee of the City *vending* on City-owned property where *vending* is authorized under a City lease or permit.

§36.0114 [Reserved]

Section 2. That Chapter 5, Article 4, Division 1 of the San Diego Municipal Code is amended by amending sections 54.0105 and 54.0122, to read as follows:

§54.0105 Sidewalk Sales and Displays Prohibited

- (a) Except as provided in section 54.0105(b) and (c), it is unlawful for any person to place, or allow to remain, any goods, wares, baggage, personal property or merchandise on any sidewalk or curb, between the outer edge of the sidewalk or curb and the property line.
- (b) Section 54.0105(a) does not:
 - (1) prohibit any person from loading or unloading goods, wares, or merchandise in front of the person's place of business;
 - (2) prohibit any person from leaving any goods, wares or merchandise on any sidewalk for the length of time necessary for loading or unloading them;
 - (3) prohibit any person from loading or unloading attended baggage or personal property into or from a means of transportation; or

(4) prohibit sidewalk vending authorized by Chapter 3, Article 6, Division 1.

(c) Sidewalk sales may be permitted in a Special Event Venue pursuant to a Special Event Permit issued under Chapter 2, Article 2, Division 40 of this Code.

§54.0122 Prohibitions and Regulations Applicable to the Sale or Distribution of Merchandise or Services from Vehicles

(a) Purpose and Intent. The City Council hereby finds and declares that the unrestricted sale or distribution or the offering for sale or distribution of merchandise or services from vehicles within or upon public streets, sidewalks and rights of way, *public property*, or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians thereby exposed to hazards from other vehicular traffic in the vicinity.

(b) Definitions.

(1) The terms *vehicle*, *street*, and *highway* are defined in Division 1 of the California Vehicle Code.

(2) *Public property* shall mean any real property owned or controlled by or leased or assigned to a governmental entity excluding such property as had been leased out by that entity for nongovernmental purposes. It shall also include unimproved *streets* and rights of way or similar easements for public access and use over which the public entity has a legal interest or right of control, other than a publicly maintained *street* or *highway*.

(c) Prohibitions. No merchandise or services shall be sold or distributed or offered for sale or distribution from a *vehicle* on a *street* or *highway* unless the *vehicle* is first lawfully parked or stopped and then remains for no longer a period of time than is necessary to complete the immediate sale. An operator is considered to be engaged in an “immediate sale” when there are patrons waiting in line for service. Operators of such *vehicles* shall maintain a minimum clear space of ten feet both in front of and behind the *vehicle* to allow for pedestrian safety and safe sight distance for approaching motorists. No sales or distribution shall be made when the designated minimum clear space of ten feet does not exist.

(d) [Reserved]

(e) through (h) [No change in text.]

Section 3. That Chapter 5, Article 7, Division 00 of the San Diego Municipal Code is amended by repealing sections 57.10 and 57.10.1.

Section 4. That Chapter 6, Article 3, Division 00 of the San Diego Municipal Code is amended by retitling and amending section 63.20.20, to read as follows:

§63.20.20 Sale or Rental of Vessels in Beach Areas

It is unlawful for any person to beach or moor any vessel for the purpose of displaying it for rental or sale, in any *beach area*, as defined in Municipal Code section 63.20, including Mission Bay Park, unless specifically permitted to do so

by the Director. Commercial fishers are permitted to use *beach areas* provided that their activity does not interfere with recreation.

If advertising of any kind, other than incidental advertising permanently affixed to the side of a vehicle, is displayed in the *beach area*, it shall constitute prima facie evidence that the actions of the person responsible for introducing the advertising within the *beach area* violate this section.

Persons convicted of this offense shall be punished by the following minimum fines:

First Offense— \$50.00

Second Offense— \$300.00

Third and future offenses— \$700.00

Section 5. That Chapter 6, Article 3, Division 1 of the San Diego Municipal Code is amended by amending section 63.0102, to read as follows:

§63.0102 Use of Public Parks and Beaches Regulated

- (a) [No change in text.]
- (b) Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Beach areas [No change in text.]

Expressive activity has the same meaning as in San Diego Municipal Code section 63.0502.

Open space through *Park* [No change in text.]

Services are activities involving the performance of work for others, the rental of furniture or equipment for an activity or event, or the provision of intangible items to a group of four persons or more at the same time that cannot be returned once they are provided. Examples include massage, yoga, dog training, fitness classes, equipment rental, and staging for picnics, bonfires or other activities.

Sidewalk vending has the same meaning as in San Diego Municipal Code section 36.0102.

- (c) It is unlawful for any person within any *park* to do any of the acts listed in San Diego Municipal Code section 63.0102(c).

(1) through (6) [No change in text.]

- (7) Glass Containers. It is unlawful to have, possess, or use any container made of glass, except in locations where such containers are permitted under the terms of a lease, operating agreement, or permit.

(8) through (12) [No change in text.]

- (13) Sale of Merchandise.

- (A) Except *expressive activity* authorized by Chapter 6, Article 3, Division 5 of this Code and *sidewalk vending*, it is unlawful to sell or offer for sale any goods, wares, merchandise, article, or thing whatsoever without the written consent of the City Manager.

- (B) All *sidewalk vending* in any *park* shall comply with the requirements of Chapter 3, Article 6, Division 1 of this Code.
- (14) Commercial Activity and Services. Except *expressive activity* authorized by Chapter 6, Article 3, Division 5 of this Code and *sidewalk vending* authorized by Chapter 3, Article 6, Division 1, it is unlawful to carry on or conduct commercial activity, to provide any *service*, or to solicit offers to purchase, barter, or to require someone to negotiate, establish, or pay a fee before providing a *service*, even if characterized as a donation, without the written consent of the City Manager. Written consent of the City Manager includes commercial activity and *services* allowed as part of a lease, permit, or other written permission from the City.
- (15) Shows. Except *expressive activity* authorized by Chapter 6, Article 3, Division 5, it is unlawful to set up, maintain, or give any exhibition, show, performance, lecture, concert, place of amusement, or concert hall without the written consent of the City Manager.
- (16) through (17) [No change in text.]
- (18) Direction from Park Ranger. It is unlawful for any person to refuse to follow or comply with any lawful order, signal, or other direction of a park ranger, or to knowingly provide false information to a park ranger.
- (19) through (28) [No change in text.]

(d) through (g) [No change in text.]

Section 6. That Chapter 6, Article 3 of the San Diego Municipal Code is amended by adding new Division 5 and new sections 63.0501, 63.0502, 63.0503, 63.0504, 63.0505, and 63.0506, to read as follows:

**Chapter 6: Public Works and Property, Public Improvement
and Assessment Proceedings**

**Article 3: Public Parks, Playgrounds, Beaches, Tidelands and
Other Property**

Division 5: Expressive Activity on Public Property

§63.0501 Findings and Purpose

- (a) The Council finds the City is committed to protecting and preserving the rights of persons engaged in *expressive activity* on public property, as protected by the First Amendment to the United States Constitution and by the California Constitution. *City parks, plazas, and sidewalks* have served as a traditional forum for performances, visual artists, and other *expressive activity*. Unregulated *expressive activity* has led to challenges for first responders to access emergency situations, has intensified competing interests in available space, and has increased the incidents of physical altercations among *sidewalk vendors* and persons engaged in *expressive activity*. Unregulated *expressive activity* has also limited the accessibility of common walkways and the safe flow of pedestrian and other traffic in some areas.

- (b) The Council further finds that certain *parks, plazas, and high-traffic areas* constitute major tourist attractions, host significant numbers of people annually, and contain limited geographic space. Visitors, tourists, *sidewalk vendors*, and people engaged in *expressive activity* compete for space in these locations. The Council finds that authorizing the City Manager to designate areas for persons engaged in *expressive activity* using equipment or furniture in certain *parks, plazas, and high-traffic areas* will reduce tensions and physical altercations associated with competing for limited space, and will ensure those engaged in *expressive activity* are able to engage their intended audiences without having to compete with commercial vendors. Additionally, the ability to designate *expressive activity areas* in certain *parks, plazas, and high traffic areas* where daily visitation is significant and where the proliferation of commercial activity potentially interferes with historic and cultural opportunities and preservation activities is necessary to protect and preserve these areas for everyone.
- (c) The Council further finds it necessary to adopt reasonable regulations on *expressive activity* to address the competing interests and uses of public property, including *parks, plazas, sidewalks and high-traffic areas*, with the City's need to preserve public health and safety, and to preserve access to and enjoyment of public property.
- (d) It is the purpose of this Division to adopt regulations for persons engaged in *expressive activity* to protect public health and safety, preserve historic and cultural opportunities, and prevent altercations arising from competing

uses of space in *parks, plazas, sidewalks, and high-traffic areas*. This Division does not apply to *sidewalk vendors*.

§63.0502 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Above-ground structure means any structure affixed to a *sidewalk* or other walkway owned, maintained, or authorized by the City, including a street light, tree well, parking meter, utility structure, utility box, bike rack, scooter corral, mailbox, trash can, elevator, kiosk, newspaper rack, picnic shelter, bench, table, wall, sign pole, traffic signal pole, signal push button pole, and stairs.

Expressive activity means all forms of speech and expressive conduct, including (1) the distribution of non-commercial information; (2) solicitation of funds, donations, subscriptions, or signatures for a charity, religious organization, non-profit organization, or government entity; (3) performances; and (4) the sale of artwork, recordings of performances, or other items that are inherently communicative in nature and have only nominal value or purpose apart from its communication. Items that are inherently communicative in nature include newspapers, leaflets, pamphlets, bumper stickers, buttons, books, audio, video, compact discs, video discs, records, *visual art* sold by the artist, including prints of the artist's *visual art*, political campaigning activity such as distribution of campaign signs, stickers, or other campaign materials, face painting, and painting henna tattoos. *Expressive activity* does not include: the sale of food; the sale or creation of *handcrafts*, skin care and beauty products; the sale of natural found

items, such as stones and gems; the provision of personal services, such as massage or hair styling; the application of substances or *handcrafts* to others such as piercings or skin care products; teaching yoga or exercise classes; or the creation or sale of mass-produced merchandise or *visual art*.

Expressive activity area means areas within *parks, plazas, and high-traffic areas* designated by the City Manager pursuant to section 65.0504 of this Code.

Handcrafts means objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, welding, or beading, including necklaces, earrings, bracelets, rings, and other jewelry used or intended for personal adornment, pottery, silver or metal work, leather goods, and trinkets. *Handcrafts* are objects not likely to communicate a message, idea, or concept to others, are often mass-produced or produced with limited variation, and often have functional utility apart from any communicative value they might have.

High-traffic areas means the following bike and shared-use paths: Bayside Walk; Bayshore Bikeway; Coast Boulevard Boardwalk between Jenner Street and Cuvier Street, including popouts; Crown Point Bike Path; La Jolla Shores Boardwalk; Liberty Station NTC Path; Mission Bay Bike Path; MLK Promenade; Ocean Boulevard Bike Path; Ocean Beach Bike Path; Ocean Front Walk; San Diego River Bike Path; Scripps Park Boardwalk, which runs along the perimeter of Ellen Browning Scripps Park; and the following sidewalks: Columbia Street; Kettner Boulevard; India Street between Ash Street and West Kalmia Street; and San Diego Avenue between Conde Street and Twiggs Street.

Park has the same meaning as in San Diego Municipal Code section 63.0102.

Plaza has the same meaning as in San Diego Municipal Code section 36.0102.

Services has the same meaning as in San Diego Municipal Code section 36.0102.

Sidewalk has the same meaning as in San Diego Municipal Code section 36.0102.

Visual art means sculptures, drawings, or paintings applied to paper, cardboard, canvas, or other similar or equivalent medium through the use of brush, pastel, crayon, pencil, stylus, or other object.

§63.0503 Expressive Activity Generally

- (a) Applicability. This Division applies to persons engaged in *expressive activity* alone or in small groups. It does not apply to spontaneous *expressive activity* by large groups, such as parades and protests, or to permitted events.
- (b) Any person engaged in *expressive activity* shall not:
 - (1) occupy a space greater than eight feet in length or four feet in width, including any equipment or display, unless the person is in an *expressive activity area* where a larger space has been set aside for *expressive activity* by the City Manager;
 - (2) display any merchandise for sale on the ground or on any *above-ground structure*;
 - (3) conduct *expressive activity* in a way that blocks the safe flow of pedestrians or other traffic or that blocks designated emergency ingress or egress routes, including blocking the *sidewalk* in a manner that reduces the useable *sidewalk* area to less than 48 inches; or

- (4) attach any equipment, display, or merchandise to any utility pole, street sign, bus stop, trash can, traffic pole, or other public structure.
- (c) All persons engaged in *expressive activity* using amplification or non-amplified sound-making devices, such as speakers, microphones, or public address systems, shall comply with section 59.5.0502(f) of this Code at all times, unless the person is in an *expressive activity area* where louder amplification has been authorized for *expressive activity* by the City Manager.

§63.0504 Expressive Activity Areas

- (a) The City Manager may designate *expressive activity areas* that shall be available, on a first-come, first-served basis, to persons who desire to use equipment, including a table, easel, stand, chair, umbrella, sunshade, or other furniture as part of their *expressive activity*. *Expressive activity areas* may be established within a *park, plaza, or other high-traffic area* when the City Manager determines one or more of the following is true:
 - (1) there is a substantial interest in designating *expressive activity areas* to provide for safe ingress and egress of people and emergency and public safety vehicles and personnel based on the existing paths of travel and emergency and public safety access routes within a specific area of the *park, plaza, or high-traffic area*;

- (2) the capacity of the *park, plaza, or high-traffic area* and the daily visitation rates are likely to create significant congestion on roads and walkways such that paths of travel are likely to be impassable or unsafe;
 - (3) the natural or developed landscape could be damaged as a result of continual use for *expressive activity* if not contained to specific areas within the *park, plaza, or high-traffic area*; or
 - (4) there is a substantial interest in designating *expressive activity areas* adjacent to events occurring in a *park, plaza, or high-traffic area*, including private events and special events permitted pursuant to Chapter 2, Article 2, Division 40 of this Code, when the City Manager determines *expressive activity areas* are necessary to provide for safe ingress and egress of persons and use of emergency and public safety access routes in and around the event.
- (b) If the City Manager designates *expressive activity areas* within a *park, plaza, or high-traffic area*, all persons engaged in *expressive activity* who use equipment, including a table, easel, stand, chair, umbrella, sunshade, or other furniture as part of their *expressive activity*, shall confine their activities to one of the *expressive activity areas*.
- (c) *Expressive activity areas* shall be used for *expressive activity* only. No person shall engage in sidewalk vending regulated by Chapter 3, Article 6, Division 1, or sell any food, *handcraft*, or mass produced *visual art* that does not constitute *expressive activity* within an *expressive activity area*.

- (d) A person may only use one *expressive activity area* at a given time.
- (e) No person shall purchase, sell, barter, or exchange any space within an *expressive activity area* with another person or reserve or hold space within an *expressive activity area* for another person.
- (f) Any person who fails to comply with this section 63.0504 may be asked to leave the *expressive activity area* and may be subject to the penalties and fines in section 63.0506.

§63.0505 Services and Sales of Handcrafts and Mass-Produced Visual Art

Vendors of *handcrafts* or mass-produced *visual art* and vendors of *services* shall comply with the Sidewalk Vending Regulations in Chapter 3, Article 6, Division 1, for all vending activities in *parks, plazas, beach areas*, and on *sidewalks* that are not otherwise authorized by a special event permit, lease, or other advance written approval by the City Manager.

§63.0506 Penalties and Fines

- (a) Any violation of this Division shall be subject to the following:
 - (1) an administrative citation and \$100 penalty for a first violation.
 - (2) an administrative citation and \$200 penalty for a second violation within one year of the first violation.
 - (3) an administrative citation and \$500 penalty for a third and each subsequent violation within one year of the first violation.
- (b) Administrative citations may be appealed pursuant to Chapter 1, Article 2, Division 5 of this Code and all appeals shall be conducted in accordance with Chapter 1, Article 2, Division 4.

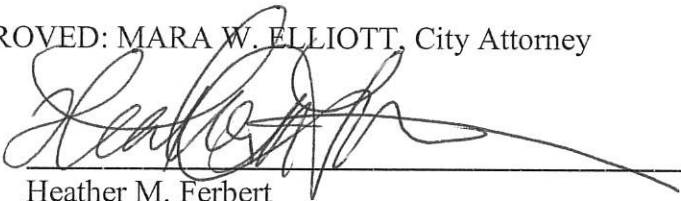
- (1) In addition to the powers conferred upon the enforcement hearing officer under section 12.0407 of this Code, such officer shall take into consideration the person's ability to pay the fine upon their request. If the enforcement hearing officer finds the person meets the criteria described in California Government Code section 68632(a) or (b), or any successor section, the enforcement hearing officer shall order the City to accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this Division.
- (2) The enforcement hearing officer shall have the authority to allow the person to complete community service in lieu of paying the total administrative fine.

Section 7. That in accordance with San Diego Ordinance O-21577 (Dec. 14, 2022), the Sidewalk Vending Regulations, as amended by this Ordinance and applicable in the Coastal Overlay Zone is not subject to certification by the California Coastal Commission and are not an amendment to the Local Coastal Program.

Section 8. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 9. That this Ordinance shall take effect and be in force on the thirtieth day from
and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Heather M. Ferbert
Senior Chief Deputy City Attorney

HMF:sc:cm
02/08/2024
02/12/2024 COR. COPY
03/15/2024 COR. COPY 2
Or.Dept: Council District 2
Doc. No. : 3595805

I hereby certify that the foregoing Ordinance was passed by the Council of the City of
San Diego, at this meeting of FEB 27 2024.

DIANA J.S. FUENTES
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

(See attached memo and signature page.)

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: March 15, 2024
TO: Sean Elo-Rivera, Council President
FROM: City Attorney
SUBJECT: Item S502: Municipal Code Amendments to the Sidewalk Vending Ordinance heard on February 13, 2024.

Attached please find the Corrected Copy 2 Ordinance for Item S502: O-2024-73 (O-21775), Sidewalk Vending, Commercial Activity, and Expressive Activities on Public Property, introduced on Tuesday, February 13, 2024.

An error was discovered in Section 36.0113, “Non-Applicability” and it should read as follows:

§36.0113 Non-Applicability

- (c) any person engaged in commercial activity or providing *services in parks* authorized by section 63.0102(c)(14); and

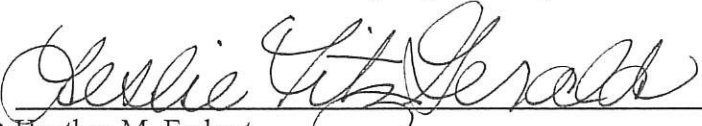
The reference to section 63.0102 was changed from (b)(14) to (c)(14). No other changes were made. Thank you.

HMF:sc
Doc. No.: 3595802

Attachments:
O-2024-73 COR. COPY 2 Clean and Strikeout
cc: Luz Anaya Luna, Director of Legislative Affairs
Heidi Palmer, Legislative Assistant

Section 9. That this Ordinance shall take effect and be in force on the thirtieth day from
and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
for Heather M. Ferbert
Senior Chief Deputy City Attorney

HMF:sc:cm
02/08/2024
02/12/2024 COR. COPY
Or.Dept: Council District 2
Doc. No.: 3557898

I hereby certify that the foregoing Ordinance was passed by the Council of the City of
San Diego, at this meeting of FEB 27 2024.

DIANA J.S. FUENTES
City Clerk

By 
Deputy City Clerk

Approved: 2/20/24
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 6, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING AND AMENDING SECTION 36.0101, AMENDING SECTIONS 36.0102 AND 36.0105, RETITLING AND AMENDING SECTION 36.0107, AMENDING SECTIONS 36.0108, 36.0110, 36.0111, AND 36.0113, AND RETITLING AND AMENDING SECTION 36.0114; AMENDING CHAPTER 5, ARTICLE 4, DIVISION 1 BY AMENDING SECTIONS 54.0105 AND 54.0122; AMENDING CHAPTER 5, ARTICLE 7, DIVISION 00 BY REPEALING SECTIONS 57.10 AND 57.10.1; AMENDING CHAPTER 6, ARTICLE 3, DIVISION 00 BY RETITLING AND AMENDING SECTION 63.20.20; AMENDING CHAPTER 6, ARTICLE 3, DIVISION 1 BY AMENDING SECTION 63.0102; AND AMENDING CHAPTER 6, ARTICLE 3 BY ADDING NEW DIVISION 5 AND NEW SECTIONS 63.0501, 63.0502, 63.0503, 63.0504, 63.0505, AND 63.0506, ALL RELATING TO SIDEWALK VENDING, COMMERCIAL ACTIVITY, AND EXPRESSIVE ACTIVITIES ON PUBLIC PROPERTY.

§36.0101 Title and Purpose

(a) Title. This Division shall be known as the Sidewalk Vending Regulations.

~~This Division regulates sidewalk vendors on public property.~~

(b) Purpose and Intent. It is the purpose and intent of this Division to provide

for the regulation of sidewalk vendors on public property pursuant to

California Government Code sections 51036 through 51039. The Council

finds and declares that these regulations are directly related to objective

health, safety, and welfare concerns created by competing uses of

sidewalks by residents, visitors, and sidewalk vendors. The Council further finds and declares that regulations on sidewalk vending in City parks and beach areas are necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities and are necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the parks and beach areas.

§36.0102 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply to Chapter 3, Article 6, Division 1; words and phrases whenever used in this Division shall be construed as defined in this section, unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

Above-ground structure through *Ballpark District* [No change in text.]

Beach area has the same meaning as in section 63.20 of this Code.

Best management practices through *Encroachment Permit* [No change in text.]

Expressive activity has the same meaning as in section 63.0502 of this Code.

Gaslamp Quarter District through *Major transit stop* [No change in text.]

Park has the same meaning as in section 63.0102(b) of this Code.

Permittee through *Portable cooking equipment* [No change in text.]

Public park means any property designated, dedicated or developed by or on behalf of the City of San Diego for park or open space use, including *sidewalks* and paths within the park or immediately adjacent to the park perimeter.

Public right-of-way through *School* [No change in text.]

Services are activities involving the performance of work for others or the provision of intangible items directly to a person or to a group of people at the same time that cannot be returned once they are provided. Examples include hair ~~braiding~~ styling, ~~face painting~~, massage, yoga, ~~fortune telling~~, ~~tattooing~~, exercise classes, and dog training.

Sidewalk [No change in text.]

Sidewalk vendor means a person who sells *goods* or provides services from *vending equipment* or from one's person upon a *sidewalk*. It includes both *roaming sidewalk vendors* and *stationary sidewalk vendors*.

Stationary sidewalk vendor through *Summer moratorium* [No change in text.]

Vend or *vending* means with respect to any *goods* or services, to sell, offer to sell, expose or display for sale, solicit offers to purchase, barter, or require someone to negotiate, establish, or pay a fee before providing *goods* or services, even if characterized as a donation, on a public street, alley, highway, parking lot, *sidewalk*, or *public right-of-way*.

Vending equipment means any *conveyance*, table, ~~pushcart~~, stand, display, ~~pedal-driven cart~~, wagon, showcase, rack, or any other free-standing equipment used for *vending* on the *sidewalk*.

Vending permit [No change in text.]

§36.0105 Sidewalk Vending Generally

- (a) through (g) [No change in text.]
- (h) Sidewalk vendors engaged in the vending of food or beverages shall display a valid San Diego County Environmental Health Permit and have hand sanitizer located in a conspicuous location readily available for use by customers.
- (i) [No change in text.]
- (j) No ~~vending vendor~~ shall ~~take place in or from a parked vehicle or~~ vend to any ~~individuals~~ person traveling in a motor vehicle along a public roadway. Vending in or from a parked vehicle is addressed in section 54.0122.
- (k) through (l) [No change in text.]
- (m) To maintain accessibility standards, *sidewalk vendors* shall not place or allow any obstruction to be placed on the *sidewalk* that would reduce the width of the *sidewalk* to less than ~~forty-eight~~ 48 inches excluding the curb, except for the brief duration of time for a *roaming sidewalk vendor* to conduct a sale. Notwithstanding the foregoing, *sidewalk vendors* shall immediately move to provide access to the *sidewalk* to avoid impeding the flow of pedestrian or other traffic.
- (n) [No change in text.]
- (o) *Sidewalk vendors* shall not ~~sell or offer to sell services,~~ or engage in or offer to engage in any type of rental activity, including the rental of any *goods* or *services*.

(p) through (u) [No change in text.]

§36.0107 Vending in ~~Public~~ Parks, Plazas, and Beach Areas

The following provisions apply in ~~public parks, plazas, and beach areas~~ beach areas. Where the following provisions are more restrictive than those set forth in section 36.0106, *sidewalk vendors* shall comply with the more restrictive provisions:

- (a) *Sidewalk vendors* shall stop *vending* before the designated closing time of ~~any public~~ the park, plaza, and beach area ~~or beach area~~.
- (b) *Vending* is permitted between 8:00 a.m. and sunset in ~~public parks, plazas, and beach areas~~ beach areas where there is no designated closing time.
- (c) [No change in text.]
- (d) ~~*Sidewalk vendors* shall not vend within 25 feet of any park decorative fountain, statue, monument, memorial, or art installation.~~
- (e) Subject to applicable law, the City Manager is authorized to enact rules and regulations to prohibit *vending* in any space that would obstruct, damage or otherwise adversely affect the public's use and enjoyment of natural resources and recreation opportunities or contribute to an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of a *public park*. ~~If the City Manager enacts any such rules and regulations pursuant to section 36.0107(e), it shall be unlawful to vend in violation of any such rules and regulations.~~

- (f) *Stationary sidewalk vendors* are not permitted within any area of a *public park* or *plaza* if the *public park* or *plaza* operator has signed an agreement for concessions that exclusively permits the sale of *goods* or *services* by a specified concessionaire, provided that notice by signage or other means is provided to the *stationary sidewalk vendor*.
- (g) [No change in text.]
- (h) Consistent with applicable law, the City Manager has the authority to reasonably limit the number of *sidewalk vendors* in certain ~~parks~~ parks by requiring *sidewalk vendors* to obtain an additional park sales permit to *vend* in the following ~~parks~~ locations: Balboa Park, Mission Bay Park, Ocean Beach Park, Mission Beach Park, Kellogg Park, Ocean Boulevard Park, Ellen Browning Scripps Park, South Mission Beach Park, and Torrey Pines City Park. ~~If the City Manager requires an additional park sales permit pursuant to section 36.0107(h), it shall be unlawful to vend in such park without such permit.~~
- (i) *Vending* is prohibited during the *summer moratorium* in Balboa Park, Mission Bay Park, and the Shoreline Parks, which are those ~~parks~~ parks contiguous to the shoreline or beach in the communities of Ocean Beach, Mission Beach, Pacific Beach, and La Jolla.
- (j) through (k) [No change in text.]

§36.0108 Sidewalk Vending Equipment and Goods

- (a) [No change in text.]
- (b) *Sidewalk vendors* shall not:

(1) through (4) [No change in text.]

(5) set up customer seating areas.

(i) *Sidewalk vendors* may only have a chair for personal use.

(ii) *Sidewalk vendors* that do not serve food or beverages may use tables only for *vending* purposes, such as conducting transactions or displaying *goods* for sale.

(iii) *Sidewalk vendors* that serve food or beverages must conduct all *vending* from a permitted *conveyance* in accordance with their health permit from the County Department of Environmental Health and Quality.

(c) through (f) [No change in text.]

§36.0110 Penalties and Fines

(a) Any violation of this Division by a *sidewalk vendor* holding a valid *vending permit* shall be ~~punished as follows~~ subject to the following:

(1) ~~a written administrative warning and a referral to a community-based organization for small business technical assistance for a first violation~~ an administrative citation and \$100 penalty for a first violation.

(2) through (3) [No change in text.]

(b) Any *sidewalk vendor* found *vending* without a *vending permit*, if required pursuant to this Division, shall immediately cease *vending* and be subject to the following:

- (1) ~~a written administrative warning and a referral to a community-based organization for small business technical assistance~~ an administrative fine of \$250 for a first violation.
- (2) through (3) [No change in text.]
- (c) If a *sidewalk vendor* who was fined for vending without a vending permit provides proof of a valid *vending permit* issued by the City that is applicable on the date of the violation, the administrative fines shall be reduced to the administrative fine schedule set forth in section 36.0110(a).
- (d) [No change in text.]

§36.0111 Impounding of Vending Equipment

- (a) ~~In addition to the administrative fines authorized by section 36.0110, the City may, upon an individual's fourth or greater violation of this Division,~~ The City may impound *vending equipment* and any *goods* therein, provided that the fourth or greater violation involves one or more of the following for any of the following reasons:
 - (1) ~~Leaving~~ vending equipment or *goods* unattended in violation of section 36.0105(k); ~~or~~
 - (2) ~~Vending~~ prohibited goods in violation of section 36.0109; ~~or~~
 - (3) ~~Vending~~ without a valid vending permit in violation of section 36.0110(b);~~;~~
 - (4) vending food without a valid and displayed San Diego County Environmental Health Permit in violation of section 36.0105(h);

- (5) vending in violation of this Division and the sidewalk vendor
refuses or fails to provide identification upon request by an
Enforcement Official;
- (6) vending in apparent violation of this Division and the sidewalk
vendor refuses or fails to remove the vending equipment from the
sidewalk, park, or other property within 30 consecutive minutes
after being instructed to do so by an Enforcement Official;
- (7) vending in a manner that blocks or obstructs the free movement of
pedestrians or other traffic on sidewalks and fails to maintain a
minimum of 48 inches of accessible path of travel in violation of
section 36.0105(m);
- (8) vending in a manner that creates an imminent and substantial
danger or environmental hazard to the health, safety, or general
welfare of the public or the property at the location of the vending
equipment. Examples include discharge of oil, grease, or other
slippery substance without any effort to maintain best management
practices; using unapproved portable cooking equipment, heating
element, gas-fueled appliance, generator, or any open flame; using
cooking equipment without a fire extinguisher, or vending during
urgent or emergency public safety events or incidents; or
- (9) vending by a sidewalk vendor who has, within a 24-month period,
been issued three or more administrative citations for violations of
this Division.

(b) Vending equipment or goods that are evidence of a crime or booked as property after arrest of a sidewalk vendor for violation of any local, state, or federal laws or regulations, excluding this Division, may be impounded in accordance with San Diego Police Department's applicable policies and procedures.

~~(b)~~(c) The City may immediately dispose of impounded *goods* that cannot be safely stored or that are perishable.

~~(e)~~(d) Any owner of impounded *vending equipment* or any *goods* may, within 10 days, request an administrative hearing before a hearing officer appointed by the City.

~~(d)~~(e) ~~Within two business days of impoundment, the sidewalk vendor or the owner of the goods or vending equipment will receive notice based on the information contained in the vending permit application regarding their rights with respect to the impoundment citation. Failure to provide such notification within two business days shall prohibit the City from charging more than 15 days of impoundment when the owner or sidewalk vendor redeems the impounded goods or vending equipment. The City Manager shall provide the person from whom the goods or vending equipment were taken with a receipt and instructions for retrieval of the impounded items, excluding any items that were disposed of according to section 36.0111(c). The receipt and instructions shall either be given to the person from whom the items were taken at the time of impound or shall be mailed within two~~

business days of the impound to the address received by the City when the person applied for a vending permit.

- (f) ~~The Impounded vending equipment and goods, excluding any items that were disposed of according to section 36.0111(c),~~ will be released to the sidewalk vendor or owner provided that proper proof of ownership is presented, and the City receives payment in full of all administrative costs incurred as a result of the violation. Any unclaimed items will be considered abandoned and forfeited to the City after 90 days following impoundment.

§36.0113 Non-Applicability

- (a) The following persons, entities, or activities are exempt from the requirements of this Division:
- ~~(1)(a) Any vendor or individual any person engaged solely in artistic performances, free speech, political or petitioning activities, or engaged solely in vending of items constituting expressive activity protected by the First Amendment, such as newspapers, leaflets, pamphlets, bumper stickers, or buttons expressive activity authorized by Chapter 6, Article 3, Division 5 of this Code;~~
- ~~(2)(b) Agencies of any federal, state, or local governments;~~
- ~~(3)(c) Any vendor of services that are otherwise permitted or authorized by the City of San Diego person engaged in commercial activity or providing services in parks authorized by section 63.0102(c)(14); and~~

(4)(d) ~~A~~ny lessee or permittee of the City *vending* on City-owned property where *vending* is authorized under a City lease or permit.

§36.0114 ~~Vending that Constitutes an Imminent and Substantial Safety or Environmental Hazard [Reserved]~~

~~The City may require any *sidewalk vendor* to leave the premises or to remove any *vending equipment* or *goods* if the *sidewalk vendor* is creating an imminent and substantial safety or environmental hazard by the location of the *vending equipment* or the nature of the *goods* being offered for sale. If the *sidewalk vendor* refuses to leave the premises or to remove any *vending equipment* or *goods* constituting an imminent and substantial safety or environmental hazard, the City may immediately impound the *vending equipment* or the *goods* being offered for sale. Any *vending equipment* or *goods* impounded are subject to the provisions of section 36.0111.~~

§54.0105 Sidewalk Sales and Displays Prohibited

- (a) Except as provided in ~~S~~ection 54.0105(b) and (c), it is unlawful for any ~~P~~erson to place, or allow to remain, any goods, wares, baggage, personal property or merchandise on any sidewalk or curb, between the outer edge of the sidewalk or curb and the property line.
- (b) Section 54.0105(a) does not:
 - (1) prohibit any ~~P~~erson from loading or unloading goods, wares, or merchandise in front of the ~~P~~erson's place of business;

- (2) prohibit any Person from leaving any goods, wares or merchandise on any sidewalk for the length of time necessary for loading or unloading them;
 - (3) prohibit any Person from loading or unloading attended baggage or personal property into or from a means of transportation; or
 - (4) prohibit sidewalk vending authorized by Chapter 3, Article 6, Division 1.
- (c) Sidewalk sales may be permitted in a Special Event Venue pursuant to a Special Event Permit issued under Chapter 2, Article 2, Division 40 of this Code ~~or with a Sidewalk Vending Permit issued under Chapter 3, Article 6, Division 1.~~

§54.0122 Prohibitions and Regulations Applicable to the Sale or Distribution of Merchandise or Services from Vehicles

- (a) Purpose and Intent. The City Council hereby finds and declares that the unrestricted sale or distribution or the offering for sale or distribution of merchandise or services from vehicles within or upon public streets, sidewalks and rights of way, ~~public property~~ public property, or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians thereby exposed to hazards from other vehicular traffic in the vicinity.
- ~~The City Council further finds that the unauthorized use of public property for private commercial activity constitutes a misuse of public property and tax money and that similar activity on private property when not in~~

conformity with health, safety, zoning and land use regulation is contrary to the public welfare.

(b) Definitions.

(1) The terms “~~vehicle,~~” “~~street,~~” and “~~highway~~” vehicle, street, and highway are defined by in Division 1 of the California Vehicle Code of California.

(2) “~~Public property~~” Public property shall mean any real property owned or controlled by or leased or assigned to a governmental entity excluding such property as had been leased out by that entity for nongovernmental purposes. It shall also include unimproved ~~streets~~ streets and rights of way or similar easements for public access and use over which the public entity has a legal interest or right of control, other than a publicly maintained ~~street~~ street or ~~highway~~ highway.

(c) Prohibitions. No merchandise or services shall be sold or distributed or offered for sale or distribution from a ~~vehicle~~ vehicle on a ~~street~~ street or ~~highway~~ highway unless the ~~vehicle~~ vehicle is first lawfully parked or stopped and then remains for no longer a period of time than is necessary to complete the immediate sale. An operator is considered to be engaged in an “immediate sale” when there are patrons waiting in line for service. Operators of such ~~vehicles~~ vehicles shall maintain a minimum clear space of ~~(10) ten~~ feet both in front of and behind the ~~vehicle~~ vehicle to allow for pedestrian safety and safe sight distance for approaching motorists. No

sales or distribution shall be made when the designated minimum clear space of ten (10) feet does not exist.

(d) ~~No merchandise or services shall be sold or distributed or offered for sale or distribution, whether from a vehicle or otherwise, upon public property without the authorization of the public entity. [Reserved]~~

(e) through (h) [No change in text.]

§57.10 ~~Fortune Telling, Etc., Advertising — Prohibited~~

~~It shall be unlawful for any person or persons to advertise by sign, circular, handbill or in any newspaper, periodical or magazine, or other publication or publications, or by any other means, to tell fortunes, to find or restore lost or stolen property, to locate oil wells, gold or silver or other ore or metal or natural product, to restore lost love or friendship or affection, to unite or procure lovers, husbands, wives, lost relatives or friends, for or without pay, by means of occult or psychic powers, facilities or forces, clairvoyance, psychology, psychometry, spirits, mediumship, seership, prophecy, astrology, palmistry, necromancy, or other craft, science, cards, talismans, charms, potions, magnetism or magnetized articles or substances, Oriental mysteries or magic of any kind or nature, or numerology, or to engage in or carry on any business the advertisement of which is prohibited in this Section and Subsections.~~

§57.10.1 ~~Same — Exceptions~~

~~The provisions of this Section and Subsections shall not be construed to include, prohibit or interfere with the exercise of any religious or spiritual function of any priest, minister, rector or an accredited representative of any bona fide church or~~

~~religion where such priest, minister, rector or accredited representative holds a certificate of credit, commission or ordination under the ecclesiastical laws of a religious corporation incorporated under the laws of any state or territory of the United States of America, or any voluntary religious association, and who fully conforms to the rites and practices prescribed by the supreme conference, convocation, convention, assembly, association or synod of the system or faith with which they are affiliated. Provided, however, that any church or religious organization which is organized for the primary purpose of conferring certificates of commission, credit or ordination for a price and not primarily for the purpose of teaching and practicing a religious doctrine or belief, shall not be deemed to be a bona fide church or religious organization.~~

**§63.20.20 ~~Sale or Rental of Merchandise, Goods, Property, Etc. Prohibited; Exceptions~~
Vessels in Beach Areas**

~~It is unlawful for any person, firm, or corporation to attempt to carry on or to carry on any commercial operation, to rent or sell merchandise of any kind, or to beach or moor any vessel for the purpose of displaying it for rental or sale, in any *beach area*, as defined in Municipal Code section 63.20, including Mission Bay Park, unless licensed or otherwise specifically permitted to do so by the Director. This is specifically intended to include a commercial operation which involves delivering merchandise, a rental item, or a service to a *beach area* whether or not a financial transaction takes place within the *beach area*. Lessees and others who carry on a commercial operation under the terms of a formal agreement with the City are exempt from this section. Commercial fishers are permitted to use *beach areas* provided that their activity does not interfere with recreation.~~

If advertising of any kind, other than incidental advertising permanently affixed to the side of a vehicle, is displayed in the *beach area*, it shall constitute prima facie evidence that the actions of the person, ~~firm, or corporation~~ responsible for introducing the advertising within the *beach area* violate this section.

Persons convicted of this offense shall be punished by the following minimum fines:

First Offense— \$50.00

Second Offense— \$300.00

Third and future offenses— \$700.00

§63.0102 Use of Public Parks and Beaches Regulated

(a) [No change in text.]

(b) Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Beach areas [No change in text.]

Expressive activity has the same meaning as in San Diego Municipal Code section 63.0502.

Open space through *Park* [No change in text.]

Services are activities involving the performance of work for others, the rental of furniture or equipment for an activity or event, or the provision of intangible items to a group of four persons or more at the same time that cannot be returned once they are provided. Examples include massage.

yoga, dog training, fitness classes, equipment rental, and staging for picnics, bonfires or other activities.

Sidewalk vending has the same meaning as in San Diego Municipal Code section 36.0102.

(c) It is unlawful for any person within any *park* to do any of the acts listed in San Diego Municipal Code section 63.0102(c).

(1) through (6) [No change in text.]

(7) Glass Containers. It is unlawful to have, possess, or use any ~~cup, tumbler, jar, or~~ container made of glass and used for carrying or containing any liquid for drinking purposes, except in locations where such containers are permitted under the terms of a lease, operating agreement, or permit.

(8) through (12) [No change in text.]

(13) Sale of Merchandise.

(A) Except for those sales that are protected by the First Amendment expressive activity authorized by Chapter 6, Article 3, Division 5 of this Code and sidewalk vending, it is unlawful to sell or offer for sale any goods, wares, merchandise, article, or thing whatsoever without the written consent of the City Manager.

(B) Those sales that are protected by the First Amendment must conform to the City Manager's regulations. All sidewalk vending in any park shall comply with the

requirements of Chapter 3, Article 6, Division 1 of this Code.

- (14) ~~Solicitation~~ Commercial Activity and Services. Except expressive activity authorized by Chapter 6, Article 3, Division 5 of this Code and sidewalk vending authorized by Chapter 3, Article 6, Division 1, it is unlawful to practice, carry on, or conduct, or solicit for any trade, occupation, business or profession commercial activity, to provide any service, or to solicit offers to purchase, barter, or to require someone to negotiate, establish, or pay a fee before providing a service, even if characterized as a donation, without the written consent of the City Manager. Written consent of the City Manager includes commercial activity and services allowed as part of a lease, permit, or other written permission from the City.
- (15) Shows. Except expressive activity authorized by Chapter 6, Article 3, Division 5, it is unlawful to set up, maintain, or give any exhibition, show, performance, lecture, concert, place of amusement, or concert hall without the written consent of the City Manager.
- (16) through (17) [No change in text.]
- (18) [~~Reserved.~~] Direction from Park Ranger. It is unlawful for any person to refuse to follow or comply with any lawful order, signal, or other direction of a park ranger, or to knowingly provide false information to a park ranger.

(19) through (28) [No change in text.]

(d) through (g) [No change in text.]

**Chapter 6: Public Works and Property, Public Improvement
and Assessment Proceedings**

**Article 3: Public Parks, Playgrounds, Beaches, Tidelands and
Other Property**

Division 5: Expressive Activity on Public Property

§63.0501 Findings and Purpose

- (a) The Council finds the City is committed to protecting and preserving the rights of persons engaged in expressive activity on public property, as protected by the First Amendment to the United States Constitution and by the California Constitution. City parks, plazas, and sidewalks have served as a traditional forum for performances, visual artists, and other expressive activity. Unregulated expressive activity has led to challenges for first responders to access emergency situations, has intensified competing interests in available space, and has increased the incidents of physical altercations among sidewalk vendors and persons engaged in expressive activity. Unregulated expressive activity has also limited the accessibility of common walkways and the safe flow of pedestrian and other traffic in some areas.
- (b) The Council further finds that certain parks, plazas, and high-traffic areas constitute major tourist attractions, host significant numbers of people annually, and contain limited geographic space. Visitors, tourists, sidewalk

vendors, and people engaged in expressive activity compete for space in these locations. The Council finds that authorizing the City Manager to designate areas for persons engaged in expressive activity using equipment or furniture in certain parks, plazas, and high-traffic areas will reduce tensions and physical altercations associated with competing for limited space, and will ensure those engaged in expressive activity are able to engage their intended audiences without having to compete with commercial vendors. Additionally, the ability to designate expressive activity areas in certain parks, plazas, and high-traffic areas where daily visitation is significant and where the proliferation of commercial activity potentially interferes with historic and cultural opportunities and preservation activities is necessary to protect and preserve these areas for everyone.

(c) The Council further finds it necessary to adopt reasonable regulations on expressive activity to address the competing interests and uses of public property, including parks, plazas, sidewalks and high-traffic areas, with the City's need to preserve public health and safety, and to preserve access to and enjoyment of public property.

(d) It is the purpose of this Division to adopt regulations for persons engaged in expressive activity to protect public health and safety, preserve historic and cultural opportunities, and prevent altercations arising from competing uses of space in parks, plazas, sidewalks, and high-traffic areas. This Division does not apply to sidewalk vendors.

§63.0502 **Definitions**

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Above-ground structure means any structure affixed to a *sidewalk* or other walkway owned, maintained, or authorized by the City, including a street light, tree well, parking meter, utility structure, utility box, bike rack, scooter corral, mailbox, trash can, elevator, kiosk, newspaper rack, picnic shelter, bench, table, wall, sign pole, traffic signal pole, signal push button pole, and stairs.

Expressive activity means all forms of speech and expressive conduct, including (1) the distribution of non-commercial information; (2) solicitation of funds, donations, subscriptions, or signatures for a charity, religious organization, non-profit organization, or government entity; (3) performances; and (4) the sale of artwork, recordings of performances, or other items that are inherently communicative in nature and have only nominal value or purpose apart from its communication. Items that are inherently communicative in nature include newspapers, leaflets, pamphlets, bumper stickers, buttons, books, audio, video, compact discs, video discs, records, *visual art* sold by the artist, including prints of the artist's *visual art*, political campaigning activity such as distribution of campaign signs, stickers, or other campaign materials, face painting, and painting henna tattoos. *Expressive activity* does not include the sale of food; the sale or creation of *handcrafts*, skin care and beauty products; the sale of natural found items, such as stones and gems; the provision of personal services, such as massage or hair styling; the application of substances or *handcrafts* to others such

as piercings or skin care products; teaching yoga or exercise classes; or the creation or sale of mass-produced merchandise or *visual art*.

Expressive activity area means areas within *parks, plazas, and high-traffic areas* designated by the City Manager pursuant to section 65.0504 of this Code.

Handcrafts means objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, welding, or beading, including necklaces, earrings, bracelets, rings, and other jewelry used or intended for personal adornment, pottery, silver or metal work, leather goods, and trinkets. *Handcrafts* are objects not likely to communicate a message, idea, or concept to others, are often mass-produced or produced with limited variation, and often have functional utility apart from any communicative value they might have.

High-traffic areas means the following bike and shared-use paths: Bayside Walk; Bayshore Bikeway; Coast Boulevard Boardwalk between Jenner Street and Cuvier Street, including popouts; Crown Point Bike Path; La Jolla Shores Boardwalk; Liberty Station NTC Path; Mission Bay Bike Path; MLK Promenade; Ocean Boulevard Bike Path; Ocean Beach Bike Path; Ocean Front Walk; San Diego River Bike Path; Scripps Park Boardwalk, which runs along the perimeter of Ellen Browning Scripps Park; and the following sidewalks: Columbia Street; Kettner Boulevard; India Street between Ash Street and West Kalmia Street; and San Diego Avenue between Conde Street and Twiggs Street.

Park has the same meaning as in San Diego Municipal Code section 63.0102.

Plaza has the same meaning as in San Diego Municipal Code section 36.0102.

Services has the same meaning as in San Diego Municipal Code section 36.0102.

Sidewalk has the same meaning as in San Diego Municipal Code section 36.0102.

Visual art means sculptures, drawings, or paintings applied to paper, cardboard, canvas, or other similar or equivalent medium through the use of brush, pastel, crayon, pencil, stylus, or other object.

§63.0503 **Expressive Activity Generally**

(a) Applicability. This Division applies to persons engaged in *expressive activity* alone or in small groups. It does not apply to spontaneous *expressive activity* by large groups, such as parades and protests, or to permitted events.

(b) Any person engaged in *expressive activity* shall not:

(1) occupy a space greater than eight feet in length or four feet in width, including any equipment or display, unless the person is in an *expressive activity area* where a larger space has been set aside for *expressive activity* by the City Manager;

(2) display any merchandise for sale on the ground or on any *above-ground structure*;

(3) conduct *expressive activity* in a way that blocks the safe flow of pedestrians or other traffic or that blocks designated emergency ingress or egress routes, including blocking the *sidewalk* in a manner that reduces the useable *sidewalk* area to less than 48 inches; or

- (4) attach any equipment, display, or merchandise to any utility pole, street sign, bus stop, trash can, traffic pole, or other public structure.
- (c) All persons engaged in *expressive activity* using amplification or non-amplified sound-making devices, such as speakers, microphones, or public address systems, shall comply with section 59.5.0502(f) of this Code at all times, unless the person is in an *expressive activity area* where louder amplification has been authorized for *expressive activity* by the City Manager.

§63.0504 **Expressive Activity Areas**

- (a) The City Manager may designate *expressive activity areas* that shall be available, on a first-come, first-served basis, to persons who desire to use equipment, including a table, easel, stand, chair, umbrella, sunshade, or other furniture as part of their *expressive activity*. *Expressive activity areas* may be established within a *park, plaza, or other high-traffic area* when the City Manager determines one or more of the following is true:
- (1) there is a substantial interest in designating *expressive activity areas* to provide for safe ingress and egress of people and emergency and public safety vehicles and personnel based on the existing paths of travel and emergency and public safety access routes within a specific area of the *park, plaza, or high-traffic area*;

- (2) the capacity of the *park, plaza, or high-traffic area* and the daily visitation rates are likely to create significant congestion on roads and walkways such that paths of travel are likely to be impassable or unsafe;
- (3) the natural or developed landscape could be damaged as a result of continual use for *expressive activity* if not contained to specific areas within the *park, plaza, or high-traffic area*; or
- (4) there is a substantial interest in designating *expressive activity areas* adjacent to events occurring in a *park, plaza, or high-traffic area*, including private events and special events permitted pursuant to Chapter 2, Article 2, Division 40 of this Code, when the City Manager determines *expressive activity areas* are necessary to provide for safe ingress and egress of persons and use of emergency and public safety access routes in and around the event.
- (b) If the City Manager designates *expressive activity areas* within a *park, plaza, or high-traffic area*, all persons engaged in *expressive activity* who use equipment, including a table, easel, stand, chair, umbrella, sunshade, or other furniture as part of their *expressive activity*, shall confine their activities to one of the *expressive activity areas*.

- (c) Expressive activity areas shall be used for expressive activity only. No person shall engage in sidewalk vending regulated by Chapter 3, Article 6, Division 1, or sell any food, handcraft, or mass-produced visual art that does not constitute expressive activity within an expressive activity area.
- (d) A person may only use one expressive activity area at a given time.
- (e) No person shall purchase, sell, barter, or exchange any space within an expressive activity area with another person or reserve or hold space within an expressive activity area for another person.
- (f) Any person who fails to comply with this section 63.0504 may be asked to leave the expressive activity area and may be subject to the penalties and fines in section 63.0506.

§63.0505 Services and Sales of Handcrafts and Mass-Produced Visual Art

Vendors of handcrafts or mass-produced visual art and vendors of services shall comply with the Sidewalk Vending Regulations in Chapter 3, Article 6, Division 1, for all vending activities in parks, plazas, beach areas, and on sidewalks that are not otherwise authorized by a special event permit, lease, or other advance written approval by the City Manager.

§63.0506 Penalties and Fines

- (a) Any violation of this Division shall be subject to the following:
 - (1) an administrative citation and \$100 penalty for a first violation.
 - (2) an administrative citation and \$200 penalty for a second violation within one year of the first violation.

- (3) an administrative citation and \$500 penalty for a third and each subsequent violation within one year of the first violation.
- (b) Administrative citations may be appealed pursuant to Chapter 1, Article 2, Division 5 of this Code and all appeals shall be conducted in accordance with Chapter 1, Article 2, Division 4.
- (1) In addition to the powers conferred upon the enforcement hearing officer under section 12.0407 of this Code, such officer shall take into consideration the person's ability to pay the fine upon their request. If the enforcement hearing officer finds the person meets the criteria described in California Government Code section 68632(a) or (b), or any successor section, the enforcement hearing officer shall order the City to accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this Division.
- (2) The enforcement hearing officer shall have the authority to allow the person to complete community service in lieu of paying the total administrative fine.

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02/08/2024
02/12/2024 COR. COPY
03/15/2024 COR. COPY 2
Or.Dept: Council District 2
Doc. No.: 3560059_2

Passed by the Council of The City of San Diego on FEB 27 2024, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District 4 - vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage FEB 28 2024.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Linda Irwin, Deputy
For Connie Patterson

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

FEB 13 2024, and on FEB 28 2024.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Linda Irwin, Deputy
For Connie Patterson

Office of the City Clerk, San Diego, California

Ordinance Number O- 21775