

ORDINANCE NUMBER O- 21459 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 23 2022

AN ORDINANCE AMENDING CHAPTER 3 OF THE  
SAN DIEGO MUNICIPAL CODE BY ADDING ARTICLE 6,  
DIVISION 1, SECTIONS 36.0101 THROUGH 36.0116; AND  
AMENDING CHAPTER 5, ARTICLE 4, DIVISION 1 BY  
AMENDING SECTION 54.0105, ALL RELATING TO  
SIDEWALK VENDING.

WHEREAS, on September 17, 2018, Governor Brown signed Senate Bill 946 (SB 946) into law, adding sections 51036 through 51039 to the California Government Code, which took effect on January 1, 2019; and

WHEREAS, SB 946 limits the authority of cities and counties to regulate sidewalk vendors except in accordance with the provisions of California Government Code sections 51038 and 51039; and

WHEREAS, more specifically, SB 946 limits local regulations to those expressly provided for in the bill or those that are otherwise directly related to objective health, safety, or welfare concerns; and

WHEREAS, the San Diego Municipal Code (SDMC) currently regulates sidewalk vendors in a manner that is inconsistent with SB 946; and

WHEREAS, SB 946 decriminalizes sidewalk vending on sidewalks and limits local regulations to those expressly provided for in SB 946 or are otherwise directly related to objective health, safety, or welfare concerns; and

WHEREAS, although SB 946 may intrude upon a municipal affair by dictating to charter cities what can or cannot be done on local sidewalks and in local parks, the City of San Diego (City) desires to adopt a sidewalk vending program and amend the SDMC to encourage entrepreneurship and provide economic opportunities for people to support themselves and their families consistent with the intent of SB 946; and

WHEREAS, mobile entrepreneurship provides economic opportunity for people to support themselves and their families, especially during this time of economic recovery due to the COVID-19 pandemic; and

WHEREAS, at the same time, the act of vending on public sidewalks creates the potential for safety hazards, such as inhibiting the ability of individuals with disabilities and other pedestrians to follow a safe path of travel; interfering with the performance of police, firefighter, and emergency medical personnel services; encouraging pedestrians to cross mid-block or stand in roadways to purchase food and merchandise; and creating obstacles and contributing to congestion for pedestrian, vehicle, and bicycle traffic; and

WHEREAS, ensuring the unobstructed flow of pedestrian traffic on public sidewalks and pedestrian paths promotes public safety by minimizing the risk that pedestrians will jostle one another, collide, trip, or fall, and safeguarding the ability of the public to safely be away from dangerous situations, such as vehicular and bicycle traffic that may occur on or near public streets, sidewalks, and pedestrian paths; and

WHEREAS, ensuring the free flow of pedestrian traffic is particularly important to the safety of the elderly, the very young, individuals with disabilities, and others who are less able to navigate through crowds and around obstacles or hazards and who are particularly endangered by having to navigate off and onto curbs when sidewalks or pedestrian paths are blocked; and

WHEREAS, hindrances to the free flow of pedestrian traffic, particularly in the City's congested public places, may interfere with the work of public safety personnel seeking immediate access to emergency situations and with other work vital to the public health and safety, such as cleaning and maintenance of public places and public property; and

WHEREAS, regulations of sidewalk vendors are needed to accommodate the equipment of sidewalk vendors while safeguarding pedestrian movement on public sidewalks; and

WHEREAS, regulations of sidewalk vendors engaged in the sale of food are also needed to protect the public health and safety and in accordance with the requirements of the San Diego County Health Department to ensure compliance with sanitation, food preparation, and food handling laws to protect against food contamination, poor hygienic practices, and food poisoning; and

WHEREAS, regulations of sidewalk vendors are needed to prevent hazardous or unsanitary conditions and to ensure that trash and debris are appropriately removed by sidewalk vendors so that such trash and debris do not become a pollutant by being left, thrown, discarded, or deposited on City streets, sidewalks, pathways, gutters, storm drains, or upon public or private lots; and

WHEREAS, a prohibition on sidewalk vending is necessary for public safety reasons in portions of East Village because of the unusually high concentration of narcotic sales, possession, and under the influence arrests that occur in this location and the problems that have already been experienced with sidewalk vendors peddling cigarettes, alcohol, and acting as facilitators for illegal narcotic sales; and

WHEREAS, restrictions on sidewalk vending in public parks and beaches are also necessary 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, restrictions on sidewalk vending in residential areas are necessary to ensure that such areas are protected from excessive noise and traffic impacts, while allowing economic opportunities for sidewalk vendors; and

WHEREAS, the regulations and requirements set forth in this Ordinance are directly related to the City's objective in protecting the health, safety, and welfare of its residents, businesses, and visitors; and

WHEREAS, the City Council finds that regulation of sidewalk vending benefits the City as a whole as it leads to equitable commerce; and

WHEREAS, in accordance with SB 946, enforcement of violations under this Ordinance will be conducted through the issuance of administrative fines with escalating fines for repeated violations and permit revocation, as opposed to criminal remedies; and

WHEREAS, this Ordinance is adopted pursuant to San Diego Charter section 2, which authorizes the City "to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter;" NOW, THEREFORE,

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

Section 1. That Chapter 3 of the San Diego Municipal Code is amended by adding Article 6, Division 1, sections 36.0101 through 36.0116, to read as follows:

**Chapter 3**  
**Business Regulations, Business Taxes, Permits and Licenses**

**Article 6: Sidewalk Vending**

**Division 1: Sidewalk Vending**

**§36.0101 Title**

This Division shall be known as the Sidewalk Vending Regulations. This Division regulates sidewalk vendors on public property.

**§36.0102 Definitions**

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* means any structure affixed to a *sidewalk*, 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 pushbutton pole, and stairs.

*Ballpark District* has the same meaning as in section 59.0102 of this Code.

*Beach access point* means public stairways, ramps, seawalls, and other physical access points to the beach.

*Best management practices* has the same meaning as in section 43.0302 of this Code.

*Business Tax Certificate* means a tax certificate issued by the City Treasurer pursuant to Chapter 3, Article 1 of this Code.

*Conveyance* means any non-motorized wheeled device used to carry persons or property and includes pushcarts, pedal-driven carts, and wagons.

*East Village District* means the area bounded by Harbor Drive, Park Boulevard, 10th Avenue, Market Street, 22nd Street, Commercial Street, 17th Street, Logan Avenue, and Sigsbee Street.

*Encroachment Permit* means any permit issued for encroachment on the public right-of-way, including public right-of-way enhancement program permits and right-of-way permits, but excluding permits for *hardscape* improvements.

*Gaslamp Quarter District* means the Gaslamp Quarter Planned District area depicted in Figure A of Chapter 15, Article 7 of the Municipal Code, which is described as extending from the south side of Broadway to Harbor Drive, and from the east side of Fourth Avenue to the west side of Sixth Avenue. Also included is the west side of Fourth Avenue (to the mid-block property line) between Market Street and Island Avenue.

*Goods* means items, personal property, merchandise, or any other similar item that is generally sold, including food and beverages.

*Hardscape* means paving material, including tiles, mortared pavers, decomposed granite, colored or patterned concrete with a tile, brick, or stone appearance, or a paving material with enhanced concrete that has an exposed aggregate, colored, or salt finish.

*High-traffic bike and shared use path* means Bayside Walk; Bayshore Bikeway; Coast Boulevard Boardwalk between Jenner Street and Cuvier Street, including popouts; Ocean Front Walk; 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; San Diego River Bike Path; and, Scripps Park Boardwalk, which runs along the perimeter of Ellen Browning Scripps Park.

*High-traffic sidewalk* means Columbia Street, Kettner Boulevard, and India Street between Ash Street and West Kalmia Street located in Little Italy, and San Diego Avenue between Conde Street and Twiggs Street in Old Town.

*Loading zone* means the space adjacent to a curb designated for the loading or unloading of passengers or materials.

*Major transit stop* means the portion of a site designated as the passenger loading area that contains any of the following: an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a service interval of 15 minutes or less during the morning and afternoon peak commute periods.

*Permittee* means the person named as permittee on a duly issued *vending permit*.

*Permitted event* means any event that has a special event permit, park use permit, or lake use permit, including farmers markets, street fairs, races, and private events.

*Plaza* means a public square or other large urban open space typically 1,000 square feet or greater in size under the control of the City's Parks and Recreation Department and designated as a City plaza, which is primarily

intended to allow the public to congregate to enjoy surrounding public amenities, such as fountains, benches, tables, landscaping, or historical structures.

*Portable cooking equipment* means any gas-fueled appliance used to heat, cook, or prepare food or beverages on a *conveyance* by a *sidewalk vendor*.

*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* means a public easement for streets, alleys, or other uses, other than a *sidewalk*.

*Residential* means any area that is zoned exclusively for residential uses.

*Roaming sidewalk vendor* means a *sidewalk vendor* who moves from place to place and stops only to complete a transaction.

*School* means an institution of learning that offers instruction in those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education. This definition does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college, or university.

*Services* are activities involving the performance of work for others or the provision of intangible items that cannot be returned once they are provided. Examples include hair braiding, face painting, massage, yoga, fortune telling, tattooing, and dog training.

*Sidewalk* means a public paved or *hardscape* path or walkway that is specifically designed for pedestrian travel. It excludes any area primarily designed for use by vehicles or the conveyance of storm water, any area planted with landscaping, or any area primarily consisting of dirt or sand.

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

*Stationary sidewalk vendor* means a *sidewalk vendor* who *vends* from a fixed location.

*Summer moratorium* means the Saturday prior to Memorial Day and the preceding Saturday and Sunday through Labor Day.

*Vend* or *vending* means with respect to any *goods*, 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*, 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* means a written City of San Diego approval required prior to *vending*.

**§36.0103 Vending Permit Requirement**

- (a) No *vending* shall take place except in accordance with the provisions of this Division or when otherwise authorized by the City.

- (b) All *sidewalk vendors* shall obtain a *vending permit* prior to *vending* on any *sidewalk*. Permits shall be issued by the City Manager or designee, unless otherwise specified in the Code.
- (c) A *vending permit* shall be valid for one year from the date of issuance and must be renewed annually. A *vending permit* may only be issued to an individual at least eighteen years of age. Any sale, assignment, or transfer of the *vending permit* is prohibited. A *vending permit* that is sold, assigned, or transferred is void.
- (d) To obtain a *vending permit*, a *sidewalk vendor* must submit the following information on a permit application form provided by the City:
- (1) the name, address and telephone number of the *sidewalk vendor*;
  - (2) proof of valid, government-issued photo identification;
  - (3) the name and business address of the company, partnership, or corporation if the *sidewalk vendor* is an agent of a company, partnership, or corporation;
  - (4) a current valid *business tax certificate* issued to the *sidewalk vendor*, or if the *sidewalk vendor* is an employee, a current valid *business tax certificate* for the business employing the *sidewalk vendor* along with proof of employment, such as a current pay stub. With the submission of a complete *vending permit* application, a *vending permit* may be issued with the submission of

- a complete *business tax certificate* application, which may be submitted concurrently with, or prior to, the *vending permit* application;
- (5) proof of a California Department of Tax and Fee Administration seller's permit applicable to the *sidewalk vendor* to the extent required by law that notes the City of San Diego as a location or sub-location, which is valid for the duration of the *vending permit*;
  - (6) for those *sidewalk vendors* selling food, proof of both:
    - (A) a valid San Diego County Environmental Health Permit applicable to the *vending equipment* to be used for food preparation and storage to the extent required by law; and
    - (B) either a Manager's Food Safety Certificate or a San Diego County Food Handlers Card applicable to the *sidewalk vendor* to the extent required by law;
  - (7) a certification by the *sidewalk vendor* that to the *sidewalk vendor's* knowledge and belief, the information contained on the form is true; and
  - (8) such other information as the City Manager deems reasonably necessary to administer this Division.
- (e) Each *vending permit* application shall be accompanied by a non-refundable permit fee and a signed waiver of release and indemnification consistent with section 36.0103(g).
- (f) Each individual who intends to *vend* on a *sidewalk* must complete an application even if the individual:

- (1) is employed or engaged by another individual or a business; or
- (2) will use *vending equipment* owned by another individual or a business.

(g) Release and Indemnification Requirements

- (1) If the City issues a *vending permit*, as a condition of such permit issuance, *permittee* agrees to waive and release the City and its officers, agents, employees, contractors, and volunteers from and against any and all claims, costs, liabilities, expenses, or judgments including attorney fees and court costs arising out of any *vending* activities or any illness or injury resulting therefrom, and shall agree to indemnify and hold harmless the City, its officers, agents, employees, contractors, and volunteers from and against any and all such claims, whether caused by negligence or otherwise, except for illness and injury resulting directly from gross negligence or willful misconduct on the part of the City, its officers, agents, employees, contractors and volunteers.

- (2) If the City issues a *vending permit*, as a condition of such *vending permit* issuance, *permittee* shall acknowledge that the use of any *sidewalk* is at the *sidewalk vendor's* own risk and the City will not take any steps to ensure any *sidewalk* is safe or conducive to the *vending* activities.

- (h) A *permittee* must immediately notify the City in writing of any changes to the facts provided in a *vending permit* application after the issuance of a *vending permit*.

**§36.0104 Permit Denial and Revocation**

- (a) A *vending permit* application shall be denied if the applicant had a prior *vending permit* revoked within the past 36 calendar months. A *vending permit* application may also be denied or a *vending permit* may be revoked or not renewed for any of the following reasons:
- (1) provision of false statements, information, or facts by the *sidewalk vendor* in a *vending permit* application;
  - (2) failure of the *sidewalk vendor* to notify the City Manager within fifteen calendar days of any changes to the facts provided in a *vending permit* application after the issuance of a *vending permit*;
  - (3) repeated failure of the *sidewalk vendor* to comply with the regulations in this Division;
  - (4) violations of other local, state, or federal laws while operating as a *sidewalk vendor*; or
  - (5) the use of any *vending equipment* in a manner that endangers public health or safety.
- (b) If the application is for the renewal of a *vending permit*, the *sidewalk vendor* must pay all outstanding administrative fines and complete any other alternative disposition associated in any way with a previous violation of this Division before a *vending permit* will be renewed.
- (c) Notice of Revocation of a *vending permit* with any and all specific grounds for revocation shall be served in writing no less than 30 calendar days before revocation to the address listed on the initial application or to any subsequent address provided to the City by the *permittee*.

- (d) Any *sidewalk vendor* whose application for a *vending permit* is denied or whose *vending permit* is revoked may appeal such decision to the City Manager by filing a written notice of appeal with the City Manager or his designee within 10 calendar days after receipt of the notice of denial or revocation. The appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedure set forth in Chapter 1, Article 2, Division 4 of this Code.

**§36.0105 Sidewalk Vending Generally**

- (a) *Sidewalk vendors* shall visibly display their *sidewalk vending permit* at all times when *vending*, including any photo identification issued by the City.
- (b) *Vending* activities on *residential* blocks may occur only between the hours of 7:00 a.m. and sunset.
- (c) *Vending* activities on non-*residential* blocks may occur only between the hours of 6:00 a.m. and 10:00 p.m. or the hours of operation imposed on other businesses on the same block, whichever is least restrictive.
- (d) A *vending permit* does not provide an exclusive right to operate on any *sidewalk* or portion thereof.
- (e) *Sidewalk vendors* shall comply with all applicable laws relating to the employment of minors. Any minor assisting with or engaged in *vending* shall be accompanied by a *sidewalk vendor* with a valid *vending permit*. Any and all actions of the minor related to *vending*, including any violations committed by the minor, are attributable to the *sidewalk vendor*.
- (f) Only *roaming sidewalk vendors* may operate in *residential areas*.

- (g) *Sidewalk vendors* are responsible for ensuring that the 10-foot area immediately surrounding the *vending* space is kept clean and free of trash and debris associated with their *vending* operation.
  - (1) All *sidewalk vendors* shall provide a trash receptacle for customers and shall ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash so that public trash receptacles located on any block for use by the general public do not have to be used by customers.
  - (2) *Sidewalk vendors* shall not dispose of customer or *sidewalk vendor* trash in trash receptacles that the City provides for public use.
- (h) *Sidewalk vendors* engaged in the *vending* of food or beverages shall have hand sanitizer located in a conspicuous location readily available for use by customers.
- (i) *Sidewalk vendors* shall not display any *goods* for sale on the ground or on any *above-ground structure*.
- (j) No *vending* shall take place in or from a parked vehicle or to any individuals traveling in a motor vehicle along a public roadway.
- (k) *Sidewalk vendors* shall not leave *vending equipment* or *goods* unattended at any time.
- (l) *Sidewalk vendors* shall not connect to an external source of power, water, or any other utilities located on public property.
- (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 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 *stationary sidewalk vendor* is permitted on a *sidewalk* less than six feet in width.
- (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) *Sidewalk vendors* shall display only *goods* that are available for immediate on-site sale.
- (q) *Sidewalk vendors* shall not display any signs advertising any off-site business.
- (r) *Sidewalk vendors* who *vend* any food, beverage, or liquid product must implement the following *best management practices*:
  - (1) possess spill kits that are comprised of paper towels, cloth towels, cat litter, or sand at all times while *vending*;
  - (2) remove all spill materials from the *public right-of-way* and *sidewalks* once the spilled material is absorbed off the ground;
  - (3) capture and prevent spills leaving the area and moving into the surrounding streets from entering the storm water conveyance system, including curbs, gutters, and storm drains;

- (4) properly dispose of grease, either by hiring and utilizing an on-site grease collector or collection system, or at an acceptable facility; and
- (5) ensure that any water or rinse residue used for *vending* activities (e.g., cooler water, ice, food preparation water) is not disposed in the curbs, gutters, streets, drains, or on any public property.
- (s) As it relates to the space occupied by the *sidewalk vendor* as set forth in section 36.0108(b)(2), *sidewalk vendors* may not use more than five square feet or 25 percent of the *vending* space, whichever is less, for items not directly related to *vending* operations.
- (t) *Vending* that substantially and adversely affects the health, safety, or welfare of any individual is prohibited.
- (u) *Sidewalk vendors* shall not leave *vending equipment* on a *sidewalk* or *public right-of-way* when not *vending* or in the immediate process of setting up or concluding *vending* activity.

**§36.0106 Vending Locations**

- (a) No *stationary sidewalk vendor* shall *vend* and no *roaming sidewalk vendor* shall stop to make sales in the following locations:
  - (1) in the *public right-of-way*, or any area that blocks the safe flow of pedestrians or vehicles;
  - (2) any public property that does not meet the definition of a *sidewalk*, including but not limited to any alley, beach, street, street or roadway median, or street end;
  - (3) any parking lots;

- (4) on any slope greater than five percent or where signage indicates that wheels must be cramped to the curb;
- (5) any location that obstructs traffic signals or regulatory signs;
- (6) the *Ballpark District* during an event or game or within three hours before or one hour after an event or game;
- (7) Sports Arena Boulevard between Hancock Street and East Drive during an event or game or within three hours before or one hour after an event or game at the arena;
- (8) within 18 inches from the edge of a curb;
- (9) within 5 feet in front of or 65 feet behind the *sidewalk* along a bus stop, tram or non-rail trolley stop as measured linearly along the curb from the sign marking the bus stop, tram, or non-rail trolley stop;
- (10) within 10 feet of any:
  - (A) driveway;
  - (B) marked crosswalk; or
  - (C) fire escape or emergency exit.
- (11) within 15 feet of any:
  - (A) other *sidewalk vendor*;
  - (B) intersection;
  - (C) building entrance;
  - (D) *high-traffic sidewalk*;
  - (E) *loading zone*, parking space, or access ramp designed for individuals with disabilities;

- (F) outdoor dining or patio area;
  - (G) public restroom;
  - (H) curb ramp;
  - (I) location with a valid *encroachment permit* displayed; or
  - (J) *high-traffic bike and shared use path*.
- (12) within 25 feet of any:
- (A) *beach access point*; or
  - (B) pier.
- (13) within 50 feet of any:
- (A) railroad crossing; or
  - (B) *major transit stop*.
- (14) within 100 feet of:
- (A) the vehicle entrance of any fire station, police department, hospital, lifeguard station, or any other structure dedicated to health and safety emergency matters; or
  - (B) any City street or *sidewalk* closure.
- (15) within 150 feet of Harbor Drive between Front Street and Park Boulevard during a convention or event held at the San Diego Convention Center or within three hours before or one hour after a convention or event at the Convention Center.
- (16) within 500 feet of:
- (A) *any permitted event*;

- (B) any *school* while children are going to or from the *school*, during a recess period or within 30 minutes before or after the *school's* opening or closing hours; or
  - (C) the open-air baseball facility, located in East Village currently known as Petco Park, and the indoor arena located in Midway District currently known as Pechanga Arena within three hours before or one hour after an event or game.
- (b) *Stationary sidewalk vendors* shall not *vend* within 50 feet of another *stationary sidewalk vendor* in any City-designated promenade, except that City-designated promenades that are defined as *high-traffic sidewalks* shall be subject instead to the prohibition on vending under section 36.0106(a)(11)(D).
  - (c) *Stationary sidewalk vendors* shall not *vend* within 5 feet of any *above-ground structure*.
  - (d) *Stationary sidewalk vendors* shall not *vend* within 15 feet of any fire hydrant or fire lane.
  - (e) *Sidewalk vendors* shall not *vend* on *sidewalks* on the following streets during the *summer moratorium*: Newport Avenue between Abbott Street and Sunset Cliffs Boulevard in Ocean Beach; Ventura Place between Mission Boulevard and Ocean Front Walk in Mission Beach; Garnet Avenue between Ocean Front Walk and Cass Street in Pacific Beach; and Coast Boulevard between Cave Street and the 200 block of Coast Boulevard South in La Jolla.

- (f) *Sidewalk vendors* shall not *vend* within the *East Village District*.
- (g) *Sidewalk vendors* shall not *vend* on any City property subject to a lease agreement so long as proper notice is provided of the prohibited location(s).
- (h) *Sidewalk vendors* shall not *vend* within the *Gaslamp Quarter District*.

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

The following provisions apply in *public 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 any *public park, plaza, and beach area*.
- (b) *Vending* is permitted between 8:00 a.m. and sunset in *public parks, plazas, and beach areas* where there is no designated closing time.
- (c) *Sidewalk vendors* shall not *vend* within 50 feet of another *sidewalk vendor*.
- (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* by a specified concessionaire, provided that notice by signage or other means is provided to the *stationary sidewalk vendor*.
- (g) *Vending* activities are prohibited in the following locations in Balboa Park:
- (1) within 25 feet of: El Prado, Village Place, Pan American Road East, Pan American Road West, Pan American Plaza, Old Globe Way, Chapel Road, Spanish Village, Plaza de Panama, Plaza de California, Plaza de Balboa, War Memorial Building, the Carousel, Spreckels Organ Pavilion, Presidents Way, or any covered walkway.
  - (2) within 25 feet of the following gardens: 1935 Old Cactus Garden, Alcazar Garden, Casa del Rey Moro Garden, Desert Garden, Florida Canyon Native Plant Preserve, Inez Grant Parker Memorial Rose Garden, Marston House Garden, Palm Canyon, Trees for Health Garden, Veterans Memorial Garden, and Zoro Garden.
  - (3) within 50 feet of the Botanical Building or Lily Pond.
  - (4) within Balboa Park between December 25 and January 1.
- (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 parks: 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 contiguous to the shoreline or beach in the communities of Ocean Beach, Mission Beach, Pacific Beach, and La Jolla.
- (j) *Vending* is prohibited in the following locations: Sunset Cliffs Natural Park and Mission Beach Park as defined in section 63.50 of this Code.
- (k) *Sidewalk vendors shall not use amplified or non-amplified sound-making devices in conjunction with vending, such as speakers, microphones, public address systems, bells, and chimes.*

**§36.0108 Sidewalk Vending Equipment and Goods**

- (a) Notwithstanding any specific provisions of this Division, a *sidewalk vendor* shall not use *vending equipment* in a manner that violates any law by endangering the safety of person or property or causing a public or private nuisance.
- (b) *Sidewalk vendors* shall not:
  - (1) display *goods* less than 28 inches or more than 34 inches off the ground;
  - (2) occupy a space exceeding 24 square feet, greater than 8 feet in length, or 4 feet in width including *vending equipment*, but excluding the space the *sidewalk vendor's* own person occupies;

- (3) use or display any item, equipment, or structure greater than 8 feet in height or extends or overhangs more than 4 inches, unless the protrusion is located 27 inches or less, or 80 inches or more from the ground;
  - (4) use amplified sound-making devices in conjunction with *vending*, such as speakers, microphones, and public address systems; and
  - (5) set up customer seating areas. *Sidewalk vendors* may only have a chair for personal use. *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. *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) No *vending equipment* may be attached to or make contact with any utility pole, street sign, bus stop, trash can, traffic pole, or other public structure.
- (d) *Sidewalk vendors* shall not use:
- (1) portable generators;
  - (2) outdoor wood burning ovens or charcoal barbecues; and
  - (3) gasoline or kerosene.
- (e) *Roaming sidewalk vendors* shall not use any *portable cooking equipment*, gas-fueled appliance, or any open flame unless approved and permitted by the County Department of Environmental Health and Quality.

- (f) Notwithstanding subsection (d), *stationary sidewalk vendors* with required permits from the County Department of Environmental Health and Quality such as a Mobile Food Facilities permit may use *portable cooking equipment* authorized by such permits in compliance with the California Retail Food Code and subject to the following regulations:
- (1) While the *portable cooking equipment* is in operation:
    - (A) It must be kept at least 20 feet from any permanent structure and at least 30 feet from dry grass, grain, brush, or forested area;
    - (B) It must not be unattended; and
    - (C) The *stationary sidewalk vendor* shall not smoke or vape.
  - (2) The *stationary sidewalk vendor* must regularly clean the *portable cooking equipment* to remove grease and food buildup.
  - (3) The *stationary sidewalk vendor* shall:
    - (A) use only propane, natural gas, or butane cylinder tanks;
    - (B) use or store only propane, natural gas, or butane tanks of 20 gallons or less, with a limit of two 20-gallon tanks on a *conveyance*;
    - (C) store tanks in an upright position during use and positioned in such a way as to prevent falling, tipping, and tampering;
    - (D) disconnect all tanks while the *conveyance* is in transit or not in use;

- (E) use only tanks with a shut-off valve and a pressure regulator, having hoses of a type approved for use by the manufacturer with the equipment; and
  - (F) test all connections to the tank for potential leaks using soap and water before each use.
- (4) Any *conveyance* that stores a tank shall have two ventilation openings on opposite sides at the cylinder valve level and at least one ventilation opening at the floor level. Each opening shall be a minimum of 10 square inches, screened with a minimum 16 mesh and shall vent to the exterior of the *conveyance*.
- (5) *Stationary sidewalk vendors* shall comply with the following fire extinguisher requirements:
- (A) Keep an easily accessible, properly charged and maintained 10 BC-rated fire extinguisher on the *conveyance* at all times and be familiar with its proper use. *Stationary sidewalk vendors* shall ensure the extinguisher has been serviced within the last year and has a valid California State Fire Marshal service tag attached;
  - (B) Mount the extinguisher securely to the *vending equipment*;  
and
  - (C) Locate the extinguisher away from the cooking area.

**§36.0109 Prohibited Sales**

*Sidewalk vendors* are prohibited from *vending* the following *goods*: alcoholic beverages; tobacco and tobacco products; vaping products; smoking and drug related paraphernalia, not including apparel; cannabis and cannabis products; weapons, including knives, guns, or explosive devices; BB devices or imitation firearms; pharmaceuticals; live animals; harmful materials to minors as defined in section 58.07 of this Code; or other products prohibited by local, state and federal laws.

**§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:
- (1) a written administrative warning and a referral to a community-based organization for small business technical assistance 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) 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 for a first violation.

- (2) an administrative fine of \$500 for a second violation within one year of the first violation.
  - (3) an administrative fine of \$1,000 for a third and each subsequent violation within one year of the first violation.
- (c) If a *sidewalk vendor* 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) 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 hearing officer finds the person meets the criteria described in California Government Code section 68632(a) or (b), or any successor section, the hearing officer shall order the City to accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this Division.
  - (2) The hearing officer shall have the authority to allow the person to complete community service in lieu of paying the total administrative fine.

**§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, impound *vending equipment* and any *goods* therein, provided that the fourth or greater violation involves one or more of the following:
- (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).
- (b) The City may immediately dispose of impounded *goods* that cannot be safely stored or that are perishable.
- (c) 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) 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 *vending equipment* and *goods* 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.

**§36.0112 Applicability**

- (a) Nothing in this Division prevents the City from taking action to further compliance with, or enforcement of, other local, state and federal laws.
- (b) *Sidewalk vendors* engaged in *vending* food items are a health-regulated business subject to section 42.0102 of this Code. This Division does not affect the regulation of mobile food trucks as described in section 141.0612, sales out of vehicles as described in section 54.0122, or farmers' markets as described in section 141.0503.
- (c) All individuals engaged in *vending* subject to the provisions of this Division must comply with the aggressive solicitation prohibitions contained in Chapter 5, Article 2, Division 40 of this Code.

**§36.0113 Non-Applicability**

- (a) The following persons, entities or activities are exempt from the requirements of this Division:
  - (1) Any vendor or individual 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;
  - (2) Agencies of any federal, state or local governments;

- (3) Any vendor of *services* that are otherwise permitted or authorized by the City of San Diego; and
- (4) Any 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**

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.

**§36.0115 Entrepreneurship Zones**

Notwithstanding sections 36.0105(l) through (n), 36.0105(s), 36.0106, 36.0107(c) through (e), 36.0107(g), and 36.0108(b)(2), the City Manager is authorized to designate one or more entrepreneurship zones in the City subject to the approval of the City Council by resolution where *sidewalk vendors* may *vend* in these zones subject to the rules and regulations enacted by the City Manager. If the City Manager enacts such rules and regulations pursuant to section 36.0115, it shall be unlawful to *vend* in violation of these rules and regulations.

**§36.0116 Reporting Requirements**

The City Manager shall annually report to the City Council or the appropriate City Council Committee on the results of implementing and enforcing this Article, including:

- (a) the total number of *vending permits* issued by the City;
- (b) the total number of *vending permits* denied and revoked during the prior year;
- (c) the total cost to the City to administratively implement and enforce the regulations in this Article during the prior year;
- (d) the total amount of *vending permit* fees and administrative fines collected pursuant to this Article during the prior year;
- (e) the total amount of written warnings and referrals to community-based organizations issued pursuant to this Article during the prior year;
- (g) the total number of claims and lawsuits brought against the City related to sidewalk *vending* and the amount of money that the City has expended to defend and resolve such lawsuits, including any judgments or settlements, during the prior year; and
- (g) any proposed changes to these regulations.

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

**§54.0105 Sidewalk Sales and Displays Prohibited**

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

- (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.

Section 3. 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 4. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that provisions of this Ordinance, which apply inside the Coastal Overlay Zone and relate to coastal development as defined in California Public Resources Code section 30106, specifically the relevant definitions in Section 36.0102 of this Ordinance, and Sections 36.0105(b), 36.0105(c), 36.0105(f), 36.0105(n), 36.0105(q), 36.0105(s), 36.0106(a)(1) through 36.0106(a)(5), 36.0106(a)(8) through 36.0106(a)(11)(C), 36.0106(a)(11)(E) through 36.0106(a)(15), 36.0106(a)(16)(A) through (B), 36.0106(b) through (g), 36.0107(a) through (f), 36.0107(h) through (k), 36.0108(a) through (c), and 36.0115 of this Ordinance, are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment and shall not take effect in the Coastal Overlay Zone until the date the California Coastal Commission unconditionally certifies those provisions for inclusion in the local coastal program.

Section 5. All sidewalk vendors, as defined in the Ordinance, shall have until June 1, 2022, to either cease vending activity or comply with the provisions of the Ordinance. If the California Coastal Commission has not certified the amendments to the Local Coastal Program as set forth in Section 4 above, sidewalk vendors shall comply with those provisions of the Ordinance submitted to the Coastal Commission once they become effective.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Ken So  
Ken So  
Chief Deputy City Attorney

KRS:nja:jdf:cm  
02/24/2022  
03/01/2022 REV.  
Or. Dept: Council District – 2  
Doc. No. 2905105

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 17 2022.

ELIZABETH S. MALAND  
City Clerk

By [Signature]  
Deputy City Clerk

Approved: 5/20/22  
(date)

[Signature]  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

(NOTE: The date of final passage is May 23, 2022, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.)