



The City of San Diego

Staff Report

DATE ISSUED: February 6, 2024  
TO: Honorable Councilmembers  
FROM: Office of Councilmember Jennifer Campbell  
SUBJECT: Municipal Code Amendments to address concerns with Sidewalk Vending, Commercial Activity and Expressive Activities on Public Property

Primary Contact: Venus Molina Phone: (619) 236-6622

Council District(s): Citywide

**OVERVIEW:**

In this past year, we recognized the need to revisit and amend the San Diego Municipal Code to address concerns with sidewalk vending activities and to accommodate expressive activities while ensuring proper enforcement. We are introducing amendments that address activities protected by the First Amendment, sidewalk vending impounding procedures and enforcement mechanisms, as well as some necessary clean-up language.

**PROPOSED ACTIONS:**

Adopt an ordinance amending the Municipal Code related to sidewalk vending and expressive activities on public property.

**DISCUSSION OF ITEM:**

**Expressive Activity**

The primary goal of such amendments is to strike a balance between protecting First Amendment rights on the one hand and maintaining public safety, order, and accessibility on sidewalks, parks and beaches on the other. The proposal includes amending the sidewalk vending ordinance to no longer exempt people engaged in expressive activities and proposes new reasonable rules and regulations for people engaged in expressive activities to balance between protecting constitutional

rights and maintaining public order, ensuring that sidewalks remain accessible, and the City's vibrant public spaces for expression and commerce.

The fullest extent of First Amendment protections apply to what courts consider "pure speech". Pure speech activities include activities like proselytizing, expressing religious, political, or ideological messages, artistic messages, nonprofit solicitation, and sales or distribution of original art or written materials. The City Attorney's Office has issued a memorandum of law, included in the backup materials, that provides legal guidance on the limits the First Amendment places on local government regulation of speech activities and provides a comprehensive chart of frequent activities in public places and whether those activities are protected by the First Amendment.

Examples of "pure speech" include

- Speaking on a street corner or in a park about a political, ideological or religious topic
- Distributing brochures
- Art sales and art creation, including paintings, caricatures, balloon animals, sculpture, and other visual arts sold by the artist
- Street performances/busking
- Face painting or henna tattoos
- Distribution or sale of books, music, paintings, photographs, sculpture or CDs or recordings created by the person selling the items
- Examples of activities that are not considered "pure speech" include:
  - sales of handcrafts like jewelry, pottery,
  - sales of personal care products, including makeup, lotion, perfume, incense and incense burners
  - sales of mass produced items, including clothing and hats
  - food sales
  - teaching exercise, yoga, or dog training classes
  - hair braiding, massage, application of skin care, makeup or other products

The proposed regulations would clearly distinguish between expressive activity and vending activity to make it clear for the public, law enforcement, speakers, and vendors which set of regulations apply to the specific activity. The Mayor's office has expressed commitment to train law enforcement and City staff involved in enforcing these regulations to ensure fair and appropriate application of the new regulations.

### **Expressive Activity Regulations**

The proposed regulations include general time, place, and manner rules that would apply to anyone engaged in protected First Amendment speech on City property, including a space limit similar to the 24 square foot limit applicable to sidewalk vendors, a prohibition from using or attaching equipment to City property, including City utilities, and display and setup provisions to ensure sidewalks and walkways are passable and safe for all people to use. City sidewalks should remain accessible to everyone, including those with mobility disabilities who need extra space to navigate. The ADA mandates that the City ensures a minimum of eight feet of passable space on sidewalks and walkways. These regulations guarantee that individuals engaging in expressive activities do so in a way that maintains safe and clear pathways for everyone. Additionally, these space requirements enable

speakers to reach their intended audience, as they are not confined to specific locations in City parks or on sidewalks. Speakers can choose their setup location based on where they believe they can effectively connect with their audience, as long as the walkways and sidewalks remain unobstructed.

The proposed regulations require all persons engaged in expressive activity using amplification or non-amplified sound-making devices, such as speakers, microphones, or public address systems, to comply with existing noise regulations in section 59.5.0502(f) of the San Diego Municipal 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. Application of the City's existing noise limits is necessary to ensure that quiet hours are implemented to address and regulate excessive or disruptive noise levels that can negatively impact the tranquility of residential areas, public spaces, and businesses.

**TABLE OF APPLICABLE LIMITS**

<b>TIME OF DAY</b>	
Sound Level Limit <b>7 a.m. to 7 p.m.</b>	65 decibels
Sound Level Limit <b>7:01 p.m. to 6:59 a.m.</b>	55 decibels

The City Manager may designate expressive activity areas in parks, plazas, and high-traffic areas that are 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. The proposed regulations prohibit the purchase, sale, barter, or exchange of any space within an expressive activity area with another person and a person may not reserve or hold space within an expressive activity area for another person. Any person who fails to comply may be asked to leave the expressive activity area and may be subject to penalties and fines.

Before establishing an expressive activity area, the City Manager must first determine that one of the following exists:

- 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;
- 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;
- 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
- 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 permitted special events, 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.

The City's ability to establish expressive activity areas is necessary because 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

Expressive Activity regulations would apply to people engaged in protected speech. If the speaker draws a crowd, the speaker may be asked to comply with City regulations prohibiting blocking traffic within parks and other public places.

Anyone who is not engaged in protected speech activities but is selling items on public property is a sidewalk vendor and must comply with the SVO. Amendments to the SVO and the proposed new Division would make this distinction clear. People who are not sidewalk vendors or engaged in covered expressive activity but who want to engage in commercial activity in public places, like City parks and beaches, would be required to follow Municipal Code section 63.0102(c)(14) and get a permit or other approval from the City in advance.

**Impounding of Sidewalk Vending Equipment**

The need for impounding procedures and increased enforcement measures arises from the challenges posed by rogue vendors who often disregard existing regulations and operate in a manner that disrupts public order and safety. These individuals have engaged in activities that obstruct sidewalks and create unsanitary conditions. Impounding provides a vital tool to swiftly address such issues by temporarily removing uncompliant vendors' equipment or goods. These measures aim to strike a fair balance between safeguarding the rights of legitimate vendors and maintaining the integrity of public spaces. Currently, the Sidewalk Vending Ordinance requires progressive administrative enforcement as set forth by SB 946.

Violations associated with any part of the ordinance have been subject to escalating fines as set forth in the table below:

<b>CURRENT Administrative Citations</b>		
<b>(Violations within one year)</b>	<b>With Permit</b>	<b>Without a Permit</b>
<b>First Violation</b>	written administrative warning and referral	written administrative warning and referral
<b>Second Violation</b>	\$200	\$500
<b>Third Violation</b>	\$500	\$1,000
<b>Fourth Violation</b>	\$500 and/or impoundment	\$1,000 and/or impoundment

The proposed amendments would remove the initial warning and replace it with a \$100 fine for permitted vendors and \$250 for unpermitted vendors. 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).

Since the Sidewalk Vending Ordinance came into effect, City enforcement teams have encountered groups of rogue vendors who exhibit a complete unwillingness to provide information or adhere to the established regulations. In response, we are proposing the adoption of the impounding mechanism currently employed by the City of Orange that would allow immediate impound of a vendor's equipment or goods if the vending poses certain public health and safety concerns, including vending food without a valid health permit. (See attachment 1)

This tool would grant enforcement officers the opportunity to immediately impound the vendor's equipment and product if they are found in violation of any of the impounding codes. The City may impound vending equipment and any goods therein, for any of the following reasons:

- Leaving vending equipment or goods unattended
- Vending prohibited goods in violation
- Vending without a valid vending permit
- Vending food without a valid and displayed San Diego County Environmental Health Permit
- Vending in violation of this Division and the sidewalk vendor refuses or fails to provide identification upon request by a City official
- Vending in 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
- 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
- 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
- Vending by a sidewalk vendor who has, within a 24-month period, been issued three or more administrative citations for violations of this Division
- 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.

- The City may immediately dispose of impounded goods that cannot be safely stored or that are perishable.
- 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.
- 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. 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.
- Impounded vending equipment and goods, excluding any items that were disposed of, 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.

### **Additional Changes**

The proposed amendments include other changes to:

- reconcile existing Code sections with state law and the SVO
- repeal prohibitions on fortune telling and similar activities protected by the First Amendment
- incorporate a definition of parks into the SVO that was adopted by the City Council in 2023

### **City Strategic Plan Goal(s)/Objective(s):**

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #1: Protect lives, property, and the environment through timely and effective response in all communities.

Goal #3: Create and sustain a resilient and economically prosperous City.

Objective #1: Diversity and growth of the local economy.

### **Fiscal Considerations:**

The cost to administer amendments has not yet been determined. City staff is currently determining the cost associated with the implementation.

### **Charter Section 225 Disclosure of Business Interests:**

N/A; there is no contract associated with this action.

**Environmental Impact:**

This activity, amendments to the Sidewalk Vending Ordinance to address concerns with sidewalk vending and expressive activities, is not a project subject to CEQA pursuant to CEQA Guidelines Sections 15378 and 15060(c)(2) and (3) as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Pursuant to state law, cities are not permitted to disallow sidewalk vending within the public right-of-way, except where the restriction is directly related to objective health, safety, or welfare concerns. The proposed amendments to the San Diego Municipal Code address concerns with sidewalk vending activities and are intended to accommodate expressive activities while ensuring proper enforcement, and while remaining within the provisions of SB 946. With these amendments, new legally enforceable regulations would be put into effect that would, among other things, include general time, place, and manner rules that would apply to anyone engaged in expressive activity or protected First Amendment speech on public property, and would provide sidewalk vending impounding procedures and enforcement mechanisms. The amendments also include definitions to provide clarity on the Sidewalk Vending Ordinance. As sidewalk vending and expressive activities are already occurring in the public right-of-way and these amendments are merely allowing the City to maintain the integrity of the public right-of-way, these amendments would not result in significant effects to the environment. Finally, even if these amendments are determined to be a project subject to CEQA, they would nevertheless be exempt pursuant to CEQA Guidelines section 15301 (Existing Facilities) as the proposed amendments would involve the continued use of existing public facilities (i.e., sidewalks) and would not result in an expansion of the existing use of these public facilities, as discussed above.

**Equal Opportunity Contracting Information (if applicable):**

N/A

Venus Molina

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Chief of Staff, Council District 2