

Expressive Activity Update – Coastal Areas

Parks and Recreation Board

**November 16, 2023
Item 203**

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Background

Why are these amendments necessary?

On May 17, 2022, the Sidewalk Vending Ordinance was approved by the City Council. This ordinance established regulations and requirements for sidewalk vending throughout the City of San Diego. Enforcement of this ordinance began on June 22, 2022.

However, in the past year a need to balance expressive activity, addressing unpermitted vendors not included in the ordinance, and maintaining public access in our parks and beaches.

Therefore, we recognized the need to revisit and amend the San Diego Municipal Code to address concerns with sidewalk vending and to accommodate expressive activities while ensuring proper enforcement.



Overview of the Proposed Amendments

Expressive Activity Regulations

The primary goal of the proposed 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.

This item highlights the key considerations and steps involved in amending the Municipal Code for expressive activities.

Defining “Pure Speech”

The fullest extent of First Amendment protections apply to what courts consider “pure speech”, such as:

- Persons expressing religious, political, philosophical, or ideological messages, including non-commercial handouts
- Artistic performances
- Activities inherently communicative in nature expressive items (i.e. books, newspapers) and art created by the vendor
- Vendors of merchandise that is “inextricably intertwined” with a statement carrying a religious, political, philosophical, or ideological message (for example, a nonprofit environmental group selling shirts and buttons with messages about climate change)
- Original art sold by the artist
- Sale of books, music, paintings, photographs, sculpture, CDs or recordings created by the vendor

Defining “Pure Speech” (continued)

Examples of activities that are NOT considered “pure speech” by the courts include:

- Sales of handcrafts, including jewelry, pottery, shea butter, incense and incense burners
- A vendor just saying the handcraft is expressive isn’t enough to make the conduct expressive for purposes of First Amendment protections
- But sales of these items may be protected “pure speech” if the totality of the facts suggest the vendor’s sales are inextricably intertwined with expression of a religious, political, philosophical, or ideological message

Time, Place, and Manner Rules

Rules would apply to anyone engaged in protected First Amendment speech on City property

- The proposed regulations would likely include a space limit similar to the 24 square foot limit applicable to sidewalk vendors.
- Proposed regulations would prohibit using or attaching equipment to City property, including City utilities and could include provisions to ensure sidewalks and walkways are passable and safe for all people to use.
- Proposed regulations may address the use of amplification, umbrellas, shade structures, and other equipment.

Identifying Speech Locations

Designated areas within parks, plazas, and other high-traffic areas

- The proposed regulations would also allow the City to identify certain speech locations in designated areas within parks, plazas, and other high-traffic areas where there's a need to set specific rules within the First Amendment framework for those areas.
- If the City established speech areas in a specific park, the proposed regulations would require speakers to use those areas only and would be available on a first-come, first-served basis.
- First Amendment areas would be limited to expressive activity and could not be used for sidewalk vending or other non-speech activities.
- Expressive Activity regulations would apply to performers/buskers, First Amendment vendors, protestors, and any other speakers engaged in protected speech. 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.



SB 946

Currently, the Sidewalk Vending Ordinance requires progressive 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:

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

Proposed Amendments for Impounding Mechanisms

Adopting a stronger Impounding process

- The proposed amendments would remove the initial warning and replace it with a \$100 fine for permitted vendors and \$250 fine for unpermitted vendors.
- 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 vendor poses certain public health and safety concerns, including vending food without a valid health permit.

Enforcement

Who will be enforcing the proposed amendments?

Enforcement will be conducted primarily by the San Diego Police Department, in addition to City of San Diego's Park Rangers on a proactive and responsive basis in areas of high concern for public health, safety and welfare.

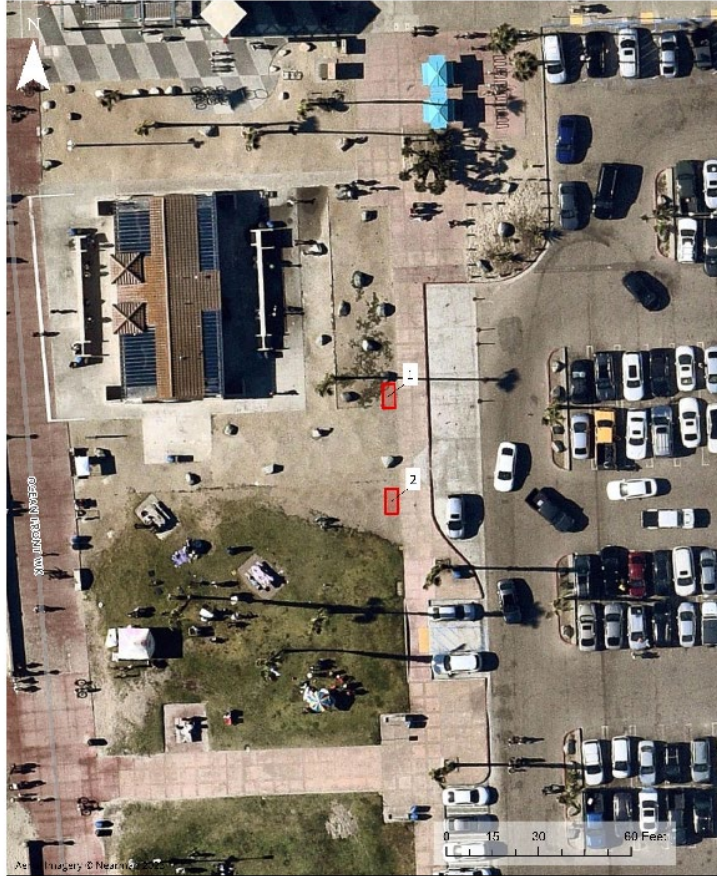
Proposed Coastal Area Maps - OB



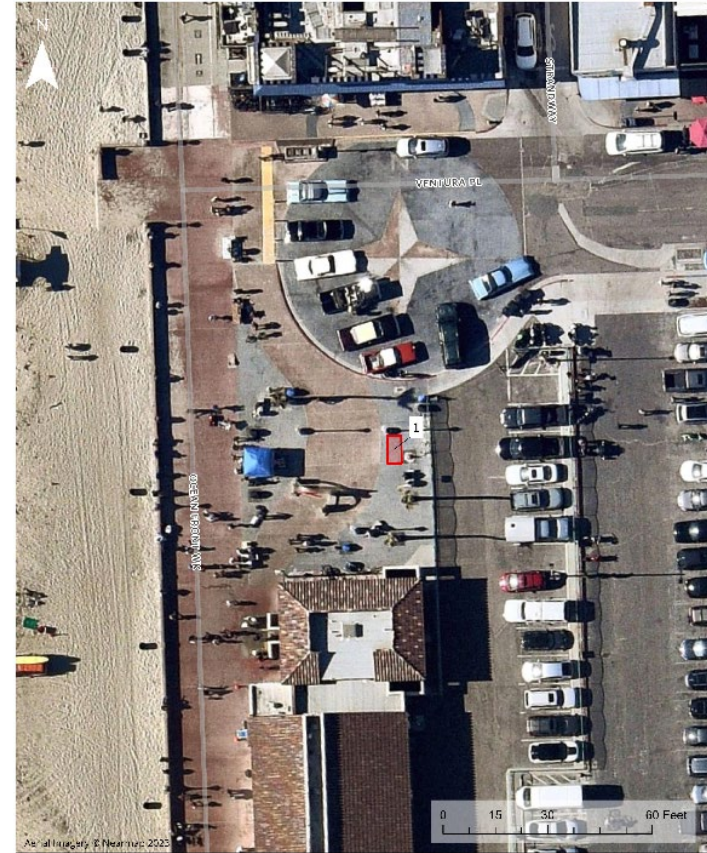
Proposed Expressive Activity Zones: Ocean Beach
Two locations, 4ft x 8ft in size

Expressive Activity Zone (4ft x 8ft)

Proposed Coastal Area Maps - MB

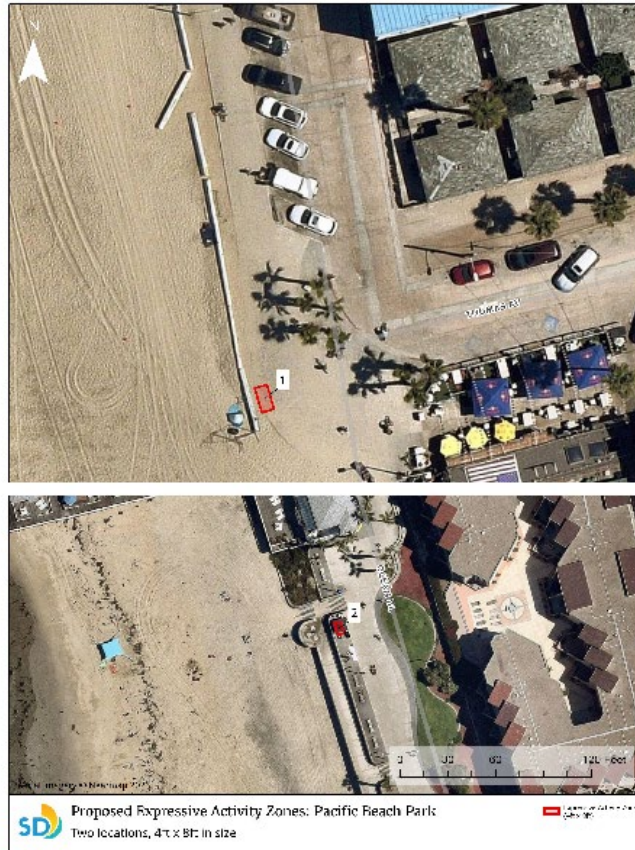


Proposed Expressive Activity Zones: Mission Beach Park/Belmont - South
 Two locations. Each 4 ft. x 8 ft in size

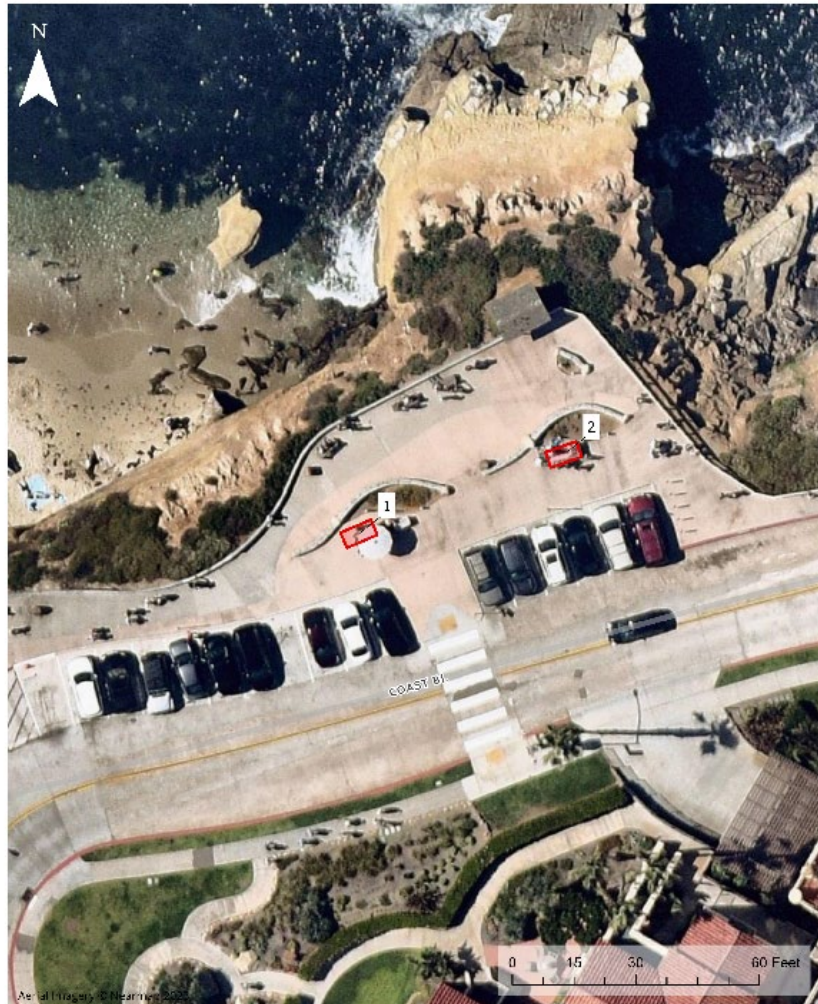


Proposed Expressive Activity Zones: Mission Beach/Belmont - North
 One location, 4 ft. x 8 ft in size

Proposed Coastal Area Maps - PB

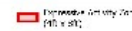


Proposed Coastal Area Maps – LJ Childrens Pool

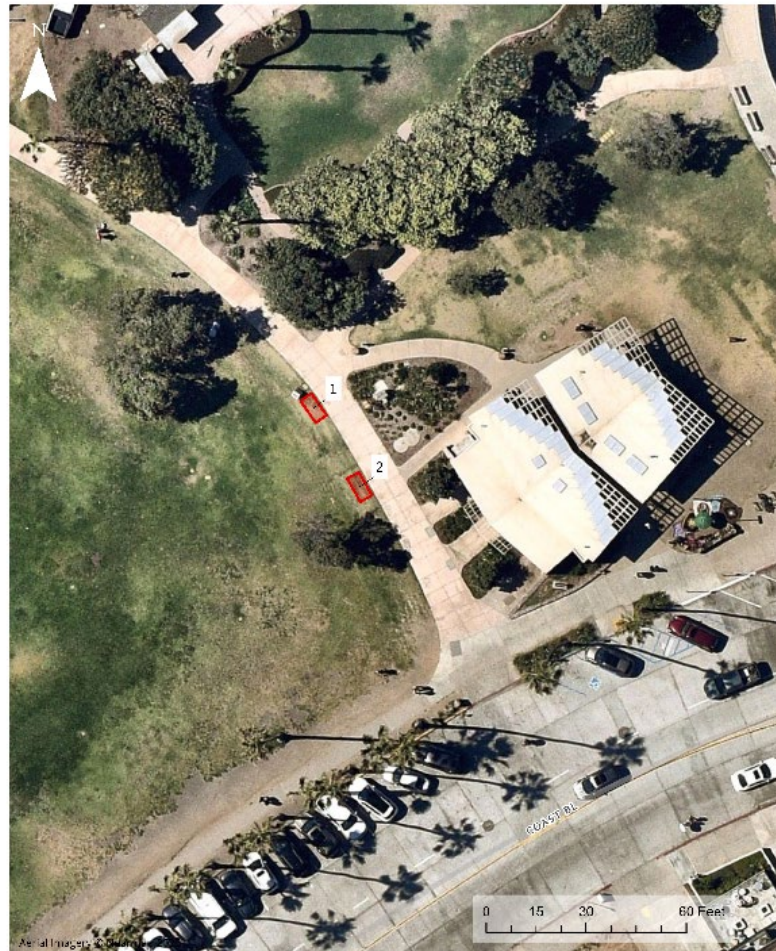


Proposed Expressive Activity Zones: La Jolla Area, Children's Pool

Two locations, 4ft x 8ft in size



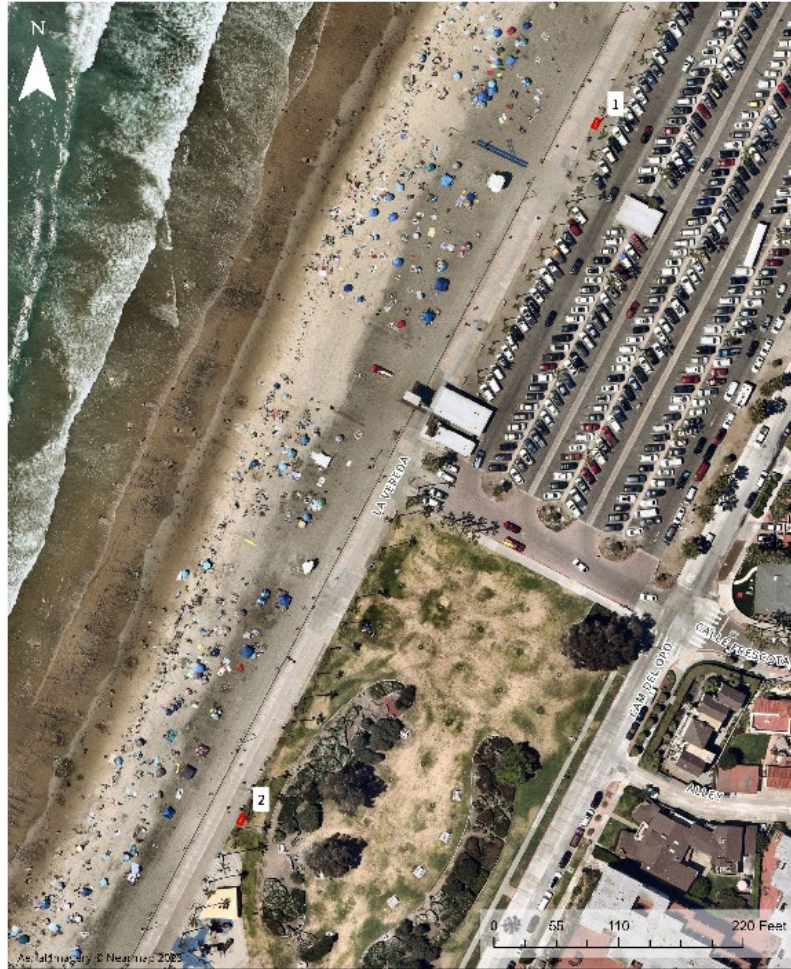
Proposed Coastal Area Maps – LJ Scripps Park



Proposed Expressive Activity Zones: La Jolla Area, EB Scripps Park
Two locations, 4ft x 8ft; in size

Expressive Activity Zone
(4ft x 8ft)

Proposed Coastal Area Maps – LJ Kellogg Park



SD Proposed Expressive Activity Zones: La Jolla Shores
Two locations, 4ft x 8ft in size

Proposed Activity Zone (4ft x 8ft)



Questions?