



The City of San Diego

Staff Report

DATE ISSUED: February 9<sup>th</sup>, 2022  
TO: Honorable Committee Members  
FROM: Office of Councilmember Jennifer Campbell  
SUBJECT: Repeal of Pushcarts in the Public Right-of-Way and Business Regulations for Sidewalk Vending

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

Council District(s): All

**Overview:**

Amendment to the City's Municipal Code and Local Coastal Program to remove the pushcart regulations within the public right-of-way to comply with Senate Bill 946. Adopt an ordinance to regulate the time, place, and manner during which an individual may participate in sidewalk vending including the use of vending equipment such as non-motorized conveyances.

**Proposed Actions:**

Amend the City's Municipal Code and Local Coastal Program to remove pushcart regulations within the public right-of-way.

Approve an ordinance to amend Chapter 3 of the San Diego Municipal Code to add a new Article 6 Division 1 titled Sidewalk Vending Ordinance, and approve amendments to Chapter 5 Article 4 Division 1 Section 54.0105, to make consistent with the proposed Sidewalk Vending Ordinance.

**Discussion of Item**

The Land Development Code (LDC) provides the City's regulations for the development and use of property, information on zoning, subdivisions, grading and other related land use activities. The existing pushcart regulations have been in place since the Land Development Code was adopted in 2000. There have been minor amendments in 2013 and 2015. Currently, the existing pushcart regulations are considered a Commercial Service Use-Separately Regulated Uses within Chapter 14, Article 1, Division 6 of the Land Development Code (LDC). Pushcarts within the public right-of-way in certain zones require a Neighborhood Use Permit (NUP) and are a Process 2 staff decision. Pushcarts on private property in certain zones are

regulated as a limited use, meaning if the pushcarts comply with certain limitations, they are allowed by right without a NUP.

In 2018, the State of California passed Senate Bill 946 (SB 946) which took effect on January 1, 2019. SB 946 established parameters for the local regulation of sidewalk vendors, which only allows local authorities to regulate sidewalk vending in accordance with the provisions of the bill. The bill's primary intent was to decriminalize sidewalk vending by limiting municipalities to penalizing violations with administrative citations rather than criminal citations, in turn promoting entrepreneurship and economic success for sidewalk vendors. Sidewalk vending encourages entrepreneurship and accessibility into the local economy as well as economic opportunities for people to support themselves and their families.

Sidewalk vending is the act of selling food, beverages, or other merchandise on the City of San Diego's sidewalks or hardscape pedestrian pathways from one person or through the use of vending equipment such as a pushcart. It does not include the sale of services or rentals, which is not covered by SB 946.

SB 946 allows municipalities to regulate sidewalk vending where the objective is directly related to public health, safety and welfare. SB 946 specifically states that perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern. SB 946 also allows municipalities to establish regulations within parks that are necessary to prevent an undue concentration of commercial activity which would unreasonably interfere with the scenic and natural characteristics of the park. It also allows regulations that would ensure the public's use and enjoyment of natural resources and recreational opportunities with parks.

In addition, SB 946 allows municipalities to regulate sidewalk vendors within the following parameters:

- Ensure compliance with the Americans with Disabilities Act and other disability access standards;
- Establish criteria for permit issuance including requiring basic information of sidewalk vendors;
- Require clean and sanitary conditions;
- Enact regulations on sidewalk vending equipment;
- Sets hours of operation and operating procedures in residential and non-residential areas. However, the limitation on hours of operation cannot be unduly restrictive and shall not be more restrictive than any limitation on hours of operation imposed on other businesses or uses on the same street;
- The option to prohibit stationary vending within residential zones without relying upon a specific nexus to public health, safety, or welfare concerns.

In order to be consistent with SB 946, the City needs to repeal sections of the existing San Diego Municipal Code (SDMC) that relate to sidewalk vending, including Section §141.0619, which regulates among other things pushcarts in the public right-of-way. The existing regulations for pushcarts on private property will remain as SB 946 only addresses pushcarts on public sidewalks. In order to regulate sidewalk vending consistent with the provisions of SB 946, the City also needs to adopt new regulations. These regulations will replace regulations that do not substantially comply with SB 946 and will be placed in Chapter 3 of the San Diego Municipal Code; Business Regulations, Business Taxes, Permits and Licenses.

## **Previous Approval Process for Sidewalk Vending**

Prior to SB 946, the City regulated aspects of sidewalk vending through SDMC §141.0619 – Pushcarts. Where allowed in the SDMC, this section required sidewalk vendors to undergo a discretionary review process by obtaining a Neighborhood Use Permit (NUP) which prohibited vending within all residential zones.

As a discretionary action, obtaining an NUP required an \$5,600.21 deposit to the Development Services Department to begin the review process. To date, the City has no discretionary permits on file or any outstanding violations from any sidewalk vendor under SDMC §141.0619 – Pushcarts.

Sidewalk sales were also previously regulated under SDMC section 54.0105 and also required a Solicitor's Permit under SDMC section 33.1401. Sales and solicitation in parks were also regulated by SDMC section 63.0102, which required a permission by the City Manager to do so. SDMC section 54.0105 is being amended as part of the proposed sidewalk vending regulations to allow sidewalk vending with a valid permit issued in this new proposed ordinance. The issuance of a sidewalk vending permit under the proposed sidewalk regulations would constitute permission of the City Manager to comply with SDMC section 63.0102. The provisions on Solicitor's Permits will be amended in the near future by the San Diego Police Department. None of these provisions have been enforced since the effective date of SB 946 in January 2019.

## **Overview of Proposed New Regulations**

In accordance with SB 946, this ordinance presents a comprehensive framework for the regulation of sidewalk vendors within the City of San Diego, which includes the issuance of a permit. The ordinance sets parameters relating to distance requirements from various public assets and facilities, prohibits vending in various high-traffic pedestrian areas, and regulates parkland, including beaches and plazas, which are under the management of the Parks & Recreation Department. The ordinance also differentiates between stationary sidewalk vendors, who vend from fixed locations, and roaming sidewalk vendors who move from place to place and stop to complete a transaction. The ordinance also outlines the application and permit process, and fines in accordance with SB 946. To avoid interference with traffic, motor vehicles, and to protect public safety, the ordinance also prohibits vending from a parked vehicle or to any individuals traveling within motor vehicles along a public roadway. Nothing in the proposed ordinance or SB 946 prevents the City from taking action to enforce generally applicable local, state, and federal laws.

## **Permit**

Unless otherwise exempt under the ordinance, sidewalk vending will only be allowed to take place with the issuance of a City-authorized sidewalk vending permit which must be obtained prior to vending on any sidewalk. The effective date of the ordinance will be set at a future city council hearing to allow time for City staff to implement the permit and to determine the cost of the permit, which is anticipated to be set at a cost-recoverable rate at a price point intended to not be cost-prohibitive to sidewalk vending. The vending permit will allow sidewalk vendors to operate anywhere in the City of San Diego and to use vending equipment as part of their vending activities subject to the regulations set forth in the ordinance and compliance with all San Diego County Environmental Health requirements related to food service and preparation and other applicable law. The vending permit will

allow sidewalk vendors to occupy a space equal to or less than 24 square feet to balance the need for pedestrians to use the sidewalk.

The vending permit will be valid for one calendar year from the date of issuance and must be renewed annually. A sidewalk vending permit may only be issued to an individual over 18 years of age and shall not be sold, assigned, or transferred. To allow the City to best understand the extent of sidewalk vending and to ensure accountability, each individual who intends to vend on a sidewalk must complete an application even if the individual is employed or engaged by another individual or a business, or will use vending equipment owned by another individual or a business. As part of the application, the sidewalk vendor must certify that the information contained in the application is true. Sidewalk vendors will be required to provide basic contact and identifying information such as their name, address, and telephone number, as well as some form of government-issued photo identification. They will also be required to obtain a business tax certificate, a California seller's permit to the extent required by law and a San Diego County Health Permit and either a Manager's Food Safety Certificate or a Food Handlers Card should they wish to sell food. If the sidewalk vendor is an agent of a company, partnership, or corporation, the sidewalk vendor must also list the name and business address of the company, partnership, or corporation.

Upon receipt of a valid sidewalk vending permit, sidewalk vendors would be given additional materials and reference information to ensure they are properly educated on the rules and regulations associated with their operation. Education and outreach to sidewalk vendors is paramount. We will be working with community-based organizations to assist in providing information in various languages to work with the diverse group of vendors.

Sidewalk vendors must visibly display their sidewalk vending permit at all times when vending including any photo identification issued by the City. A vending permit does not provide an exclusive right to operate on any sidewalk or portion thereof.

In order for a vending permit to be renewed, a sidewalk vendor must pay all outstanding administrative fines and complete any alternative disposition associated in any way with a previous violation of the ordinance prior to any such renewal. Any sidewalk vendor whose application is denied or whose vending permit is revoked may appeal such decision in accordance with Chapter 1, Article 2, Division 4 of this Code.

### **Roaming and Stationary Sidewalk Vendors**

Roaming and stationary sidewalk vendors are subject to different rules under the proposed ordinance. Roaming sidewalk vendors stop only to make a sale while stationary sidewalk vendors vend from a fixed location. Under SB 946, the City is allowed to prohibit stationary sidewalk vendors from vending within residential areas, but cannot prohibit roaming sidewalk vendors from vending within residential areas. The proposed ordinance allows roaming sidewalk vendors to vend in residential areas and prohibits stationary sidewalk vendors from doing so. Roaming sidewalk vendors may vend on residential blocks between the hours of 7 a.m. and sunset. Any sidewalk vendor may vend on a non-residential block from the hours of 6 a.m. and 10 p.m., or the hours of operation imposed on other businesses on the same street block, whichever is least restrictive and subject to the other requirements of the ordinance.

In order to better ensure compliance with the American with Disabilities Act, no stationary sidewalk vendor shall be located on a sidewalk less than six feet in width. Furthermore, both roaming and stationary sidewalk vendors must ensure that no obstruction is placed on the

sidewalk that would reduce the width of the sidewalk to less than 48 inches, except for the temporarily brief duration of time for a roaming sidewalk vendor to conduct a sale. Even in such instances, all sidewalk vendors must immediately move to provide access to the sidewalk so as not to impede the flow of pedestrian or other traffic.

### Distance Requirements

The proposed ordinance sets various distance requirements ranging from 5 feet to 500 feet from various public assets and facilities where a concentration of sidewalk vending would create public safety and public accessibility issues. In general, the specific distance requirement was set based on feedback from, but not limited to, the Fire Marshal, Public Safety Chiefs, Traffic Engineering and Operations Division of Transportation and Stormwater Department, Metropolitan Transit System, Parks and Recreation Department, and the Office of ADA Compliance and Accessibility as well as guidance from the distance requirements used in other jurisdictions.

For example, there is a 500-foot distance requirement to avoid undue interference and congestion with any permitted event as well as during the busy hours of schools and City sports facilities, which are owned, operated, managed, or leased by the City, such as Petco Park and Pechanga Arena. These locations are described in more detail below.

There are also distance requirements from various above ground structures affixed to a sidewalk such as fire hydrants, tree wells, parking meters, bike racks and utility structures.

The ordinance also restricts sidewalk vending near pedestrian facilities such as building entrances, crosswalks, public restrooms and other high areas of pedestrian activity where safety is paramount such as intersections and railroad crossings. The ordinance also prohibits vending in areas that block pedestrian or vehicle access, obstruct traffic signals and regulatory signs, and in areas, including the public right-of-way that do not meet the definition of a sidewalk or pedestrian pathway such as parking lots, roadway medians, beaches, streets, and alleys.

The follow table outlines various distance requirements and their justification.

<b>Distance Regulations for Sidewalk Vending</b>		
<b>Location</b>	<b>Distance</b>	<b>Justification</b>
Within Edge of Curb	18"	To ensure adequate distance from car doors and from vehicular traffic
Above Ground Structure	5 feet	To prevent an overconcentration of obstacles on sidewalks and to allow access by the general public and for maintenance of such structures
Slope Greater than 5% or where signage indicates that wheels must be cramped to the curb	-	To prevent unintended rolling or slipping of a conveyance down a hill
Bus Stop, Tram, or Non-Rail Trolley Stop	Within 5 feet in front of or 65 feet behind a bus stop	Recommended by MTS to ensure clear and unimpeded access for loading and unloading onto buses

Driveway and Marked Crosswalk	10 feet	To ensure proper sight distance for pedestrians and vehicles crossing these areas
Fire Escape or Emergency Exit	10 feet	To ensure unimpeded access for building evacuations during an emergency
Another Sidewalk Vendor	15 feet	To ensure adequate spacing of vendors and their respective customers
Intersection	15 feet	To ensure proper sight distance and line of sight for pedestrians and vehicles crossing these areas
Building Entrance	15 feet	To keep clear and ensure unimpeded access to building entrances and in case of emergency
High Traffic Sidewalk	15 feet	To buffer sidewalk vendors from certain sidewalks where there is a high concentration of pedestrians and a correspondingly high risk of conflicts and injury
Loading Zone, Parking Space or Access Ramp designed for persons with disabilities	15 feet	To prevent conflicts with commercial and passenger loading zones and to ensure easy access for those with disabilities to ADA infrastructure
Outdoor Dining or Patio Area	15 feet	To prevent a concentration of sidewalk vending customers from impacting the ability of the general public to ensure a safe and sanitary outdoor dining experience and to prevent conflict between outdoor diners and sidewalk vendors and their customers
Curb Ramp	15 feet	To ensure adequate access and clear visibility of curb ramps for pedestrians and in particular persons with disabilities
Fire Lane	15 feet	To avoid hindering emergency related responses from public safety personnel and equipment
Fire Hydrant	15 feet	To avoid hindering emergency related responses from public safety personnel and equipment
Location with Valid Encroachment Permit	15 feet	To prevent pedestrian conflicts and congestion conflicts with encroachments such as sidewalk cafes and the City's Public Right of Way program
High Traffic Bike and Shared Use Path	15 feet	To ensure the areas surrounding these mobility corridors have adequate spacing for bicyclists and others traveling at a higher rate of speed to

		dismount to prevent injury to the public and sidewalk vendors
Piers and Beach Access Point	25 feet	To prevent unnecessary congestion at high traffic pedestrian access points to the beach and to ensure adequate clearance for lifeguards and other public safety personnel to access these areas
Railroad Crossing	50 feet	To ensure proper sight distance for pedestrians and vehicles at these locations
Major Transit Stop	50 feet	To prevent unnecessary congestion and avoid impeding pedestrian access to mass transit facilities such as trolleys
Vehicle entrance of any Hospital, Police, Fire, Lifeguard Station, or other Structure dedicated to Health and Safety Emergency Matters	100 feet	To ensure that first responders have unimpeded access within the vicinity of these public safety facilities
City Sidewalk or Street Closure	100 feet	Given that closure is typically for construction or public safety related reasons, this requirement is to avoid people congregating near these closures which could endanger these individuals or prevent access for city crews, construction forces and public safety personnel

**High-Traffic Sidewalks**

High-traffic sidewalks are select sidewalks including hardscape pedestrian pathways around the City that experience high levels of pedestrian activity typically based on their proximity to major tourist attractions such as Little Italy, the Gaslamp District and Old Town. While the ordinance prohibits sidewalk vending within 15 feet of any high traffic sidewalk near these areas, it does allow sidewalk vending on other sidewalks including some cross-street sidewalks to allow some degree of sidewalk vending while balancing the need to not create public safety hazards. The specific sidewalk locations in the Gaslamp, Little Italy, and Old Town are described in more detail below.

**Portions of Downtown Gaslamp Quarter**

The Gaslamp Quarter is the historic heart of Downtown San Diego. As a location listed on the National Register of Historic Places since 1980, the Gaslamp Quarter experiences significant levels of pedestrian traffic due to its high number of nightclubs, restaurants and cultural history. These elements make it a high pedestrian demand corridor as outlined in the 2014 Downtown Mobility Plan Existing Conditions Report. In addition, according to a 2017 study by the San Diego Tourism Authority, the Gaslamp draws over 1.5 million visitors every year. Combined with various objects in the public right of way including but not limited to; street trees, loading zones, sidewalk cafes, kiosk and street signs, the proposed street vending

regulations prohibit vending on 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Avenue between Broadway Avenue and Harbor Drive year-round. Large lines of customers for restaurants, clubs and other nightlife activity also have significant impacts on the sidewalk. Sidewalk vending would be allowed on the Gaslamp Districts' cross streets but subject to distance requirements such as above ground facilities, building entrances, driveways, intersections, and loading zones.

### **Portions of Little Italy**

The ordinance prohibits sidewalk vending on India Street between Ash Street and West Kalmia Street in the neighborhood of Little Italy. The population density within Little Italy is very high and the area has been designated a Preserve America Community because of its historic resources and cultural significance which makes it a major tourist destination within Downtown San Diego. These elements, combined with high levels of pedestrian activity (as outlined in the 2014 Downtown Mobility Plan Existing Conditions Report), restaurants, bars and customer lines queuing onto the sidewalk with various right of way obstacles such as sidewalk cafes and bicycle racks, and trash receptacles, make it incompatible with sidewalk vending activities.

### **Portions of Old Town**

San Diego Avenue between Twiggs Street and Conde Street serves as a primary corridor and entrance point to Old Town Historic State Park. The park is home to many historically significant buildings from the 19<sup>th</sup> century including San Diego's first school house. In 1969, the park was registered as California Historical Landmark #830 and two years later added to the National Register of Historic Places in 1971. Its history and commercial corridor attracts an estimated 2 million visitors a year. As a result, the commercial corridor on San Diego Avenue is extremely impacted with pedestrians going to and from the park. These elements combined with various right of way obstacles are not compatible with sidewalk vending activities which are proposed to be prohibited year-round.

### **Additional Areas of High Pedestrian Activity**

The proposed ordinance also regulates sidewalk vending within the vicinity of several of the City's major sports facilities and meeting areas including the Convention Center, PETCO Park and Pechanga Arena for the following reasons.

#### **Convention Center**

In 2019<sup>1</sup>, the San Diego Convention Center host over 160 conventions including the world-renowned Comic-Con which see over 150,000 attendees. Over the course of 2019, the Convention Center hosted over 850 events creating extraordinary levels of pedestrian activity on Harbor Drive, the Martin Luther King Junior Promenade and at various intersections including Front Street, First Avenue, Fifth Avenue and Park Blvd. These high levels of attendance combined with multiple transit and railroad crossings present a public safety issue for pedestrians and an incompatible use with sidewalk vending activity during conventions.

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<sup>1</sup> Throughout this report, data from 2019 prior to the pandemic is used which will more accurately reflect the circumstances as the City recovers from the pandemic.



## **PETCO Park**

With a seating capacity of over 40,000 people, Petco Park attracts high levels of pedestrian traffic and activity prior to and after Padres games and special events. In 2004, the City Council created the Ballpark District (SDMC §59.0301) as a means to regulate and prohibit certain activities within the District for the purpose of protecting the public health, welfare, and safety of those businesses, residents, and visitors. As a matter of continuing to protect public safety around PETCO Park, the proposed regulations prohibit sidewalk vending within the Ballpark District and within 500 feet of Petco Park beginning three hours before the scheduled start time of any Padres games and events or City event permitted at PETCO Park. The prohibition ends one hour after the conclusion of an event. The Ballpark District is defined in SDMC section 59.0102 and includes Sixth Avenue through 14<sup>th</sup> Street between Market Street, Harbor Drive, and Commercial Street in Downtown San Diego.

## **Pechanga Arena**

Home to the San Diego Gulls and other special events, Pechanga Arena is a large capacity venue generating high levels of pedestrian traffic before and after events. Over the course of the 2019 season, the San Diego Gulls games averaged 9,000 attendees over 34 home games. Pechanga Arena's fronting street is Sports Arena Boulevard, which includes sidewalks less than 10 feet wide and a 35 MPH speed limit. As a matter of public safety, the proposed regulations prohibit vending on sidewalks fronting Sports Arena Boulevard between Hancock Street and East Drive beginning three hours before the scheduled start time of any games and events at Pechanga Arena. The prohibition ends one hour after the conclusion of a game or an event. This prohibition is intended to reduce congestion along this very busy vehicle corridor which will help to prevent pedestrian from having to step out onto the street to pass sidewalk vendors and their customers.

## **High-Traffic Bike and Shared Use Paths**

The ordinance identifies 11 pathways which are those in the highest traffic areas in terms of users; pedestrians, people on bikes, residents and visitors, and therefore with the potential for the most conflict in an area of limited space that could be further impacted if sidewalk vending were to be allowed. The higher rate of speed of bicyclists is of particular concern due to the need for more space to safely travel, stop, and dismount.

These include: Bayside Walk, Bayshore Bikeway, Ocean Front Walk, Crown Point Bike Path, La Jolla Shores Boardwalk; Liberty Station NTC Path; Mission Bay Bike Path; MLK Promenade; Ocean Beach Bike Path; Ocean Boulevard Bike Path; and San Diego River Bike Path.

Restricting sidewalk vending from these paths will allow their transportation and access functions to best serve residents and visitors traveling to and from their destinations, reduce the potential for collisions, and address other public access concerns.

## **Park Regulations**

SB 946 allows cities to regulate park areas, including beaches and plazas, based not only on public safety, health, and welfare concerns, but also to ensure two elements: (1) that recreation opportunities are not unreasonably affected by commercial vending; and, (2) that the scenic and natural characteristics of the park are maintained by preventing an undue

concentration of commercial activity. To further this objective, the ordinance sets parameters on sidewalk vending in regional parks such as Balboa Park, community parks and shoreline parks and regulations that apply to all sidewalk vending within parks, beaches, and plazas. This includes a 100-foot distance requirement between sidewalk vendors to prevent an over concentration of sidewalk vendors and to assist with ensuring adequate spacing for maintenance vehicles. In addition, a 25-foot distance requirement is proposed from any park decorative fountain, statue, monument, memorial, or art installation.

To avoid detracting from the ability for visitors to enjoy park areas, sidewalk vendors are prohibited from using amplified or non-amplified sound-making devices in conjunction with vending, including loudspeakers, microphones, public address systems, bells, and chimes. Sidewalk vendors must also cease vending before the designated closing time of any public park, plaza, and beach area. If there is no designated closing time in these areas, sidewalk vending will be permitted between 8:00 a.m. and sunset. In addition, consistent with applicable law, the City Manager has the authority to enact additional limits on sidewalk vendors within specified parks to prevent an undue concentration of commercial activity. Consistent with the express language of SB 946, the ordinance prohibits stationary sidewalk vendors from vending in any area of a public park, beach, or plaza if there is an agreement for concessions that exclusively permits the sale of goods by a specified concessionaire.

### **Balboa Park**

As the nation's largest urban cultural park and a National Historic Landmark since 1977, Balboa Park attracts over 4.6 million unique visitors a year equating to over 28 million total visits to its dozens of museums, performing arts venues, gardens and cultural and recreational attractions.

Under SB 946, the City is allowed to enact regulations within parks that are "necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural characteristics of the park." In addition, the City is allowed to enact regulations within parks that are directly related to objective health, safety and welfare concerns.

As a matter of objective health, safety and welfare concern, the proposed sidewalk vending regulations prohibit vending activity during the summer moratorium, which is defined similarly to its reference in Municipal Code Section 63.0103, and the last week of December within Balboa Park. Based on attendance data to various park institutions, these periods of the year experience higher than normal visitation contributing to increased sidewalk congestion and accessibility issues for park patrons and visitors. Prohibiting sidewalk vending during these time periods will protect public safety by reducing the likelihood of conflict between vendors and pedestrians, and ensuring accessibility throughout the park.

Outside of the time periods previously mentioned, sidewalk vending would be allowed, but within the parameters of additional proposed restrictions which would ensure that the scenic and natural characteristics of the park remain for visitors. The proposed restrictions prohibit sidewalk vending within the vicinity of roads and sidewalks within the National Landmark Historic Zone, in addition to distance requirements from park decorative fountains, statues, monuments, memorials, art installations, gardens, and other significant historical resources such as the Botanical Building and Lily Pond.

The roads with a proposed 25 foot distance requirement and within the Central Mesa’s National Landmark Historic Zone and its vicinity include El Prado, Village Place, Pan American Road East and 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, and Presidents Way. These restrictions are intended to limit an undue concentration of commercial activity as well as interferes with the scenic and natural character of the park which is consistent with SB 946.

Balboa Park’s gardens are also considered a major component of the scenic and natural characteristics of the park. To protect these experiences for park visitors, a 25-foot distance requirement is proposed from the following gardens to prevent an undue concentration of commercial activity and to protect these scenic and natural characteristics. The gardens include: 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 as well as the covered pathways.

**Shoreline Parks and Coastal Sidewalks**

San Diego’s beaches and bays are a significant attraction for visitors and locals drawing over 5 million people during the summer months in 2019. Based on concerns relating to congestion and pedestrian accessibility, the proposed regulations currently prohibit vending at Mission Bay Park and all 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 during the summer moratorium. Additionally, the ordinance prohibits sidewalk vending activities on high-traffic bike and shared use paths such as Ocean Front Walk (Mission Beach Boardwalk) and the La Jolla Shores Boardwalk. These prohibitions will help to appropriately balance the use of these pathways for cyclists, skateboarders, and other non-motorized devices to reduce public safety concerns and prevent collisions with stationary and roaming sidewalk vendors.

Outside of the summer moratorium, sidewalk vending would be allowed in shoreline parks, but subject to a 100-foot distance requirement between sidewalk vendors and at least a 25-foot distance requirement from all beach access points, which include among other things public stairways, ramps, and seawalls. This requirement is intended to allow visitors to be able to readily access and enjoy these park areas by preventing an over-concentration of commercial activity within these park areas.

The following table outlines visitation numbers to San Diego’s most popular shoreline parks and beaches. This data was collected by the San Diego Lifeguard Division and outlines total visitation statistics in addition to pedestrian traffic within their immediate vicinity.

Beach	June 2019	July 2019	August 2019	September 2019	Location Attendance Totals
Ocean Beach	206,000	401,342	210,000	173,000	990,342
Pacific Beach	294,900	360,400	256,500	143,500	1,055,300
Mission Beach	356,300	446,000	312,200	244,400	1,358,900
La Jolla Cove	160,000	246,500	235,500	114,801	756,801
La Jolla Shores	203,500	317,200	298,500	159,000	978,200
Monthly Attendance Totals	1,220,700	1,771,442	1,312,700	834,701	5,139,543

## **Coastal Sidewalks**

Portions of Coast Boulevard, Newport Avenue, Garnet Avenue, and Ventura Place are located within high pedestrian traffic commercial areas directly adjacent to or connecting to the coastline. During the summer moratorium, these streets and the sidewalks along these streets experience high levels of congestion and heightened interaction between pedestrians, vehicles, pedestrians walking with surfboards and other beach-related equipment, thereby reducing sidewalk width and increasing the potential for accidents and other conflict. For these reasons and the reasons below, sidewalk vending on these coastal sidewalks is prohibited during the summer moratorium.

In addition to the elements mentioned above, Newport Avenue and Garnet Avenue experience high levels of tourism and pedestrian activity during the summer months due in part to their close proximity to some of San Diego's longest piers. Garnet Avenue directly connects to Crystal Pier and its historical cottages and hotel. Towards the South, Newport Avenue sits feet away from the Ocean Beach Pier; the longest public pier on the west coast drawing thousands of visitors every year. Due to their popularity and use as an access route for San Diego Lifeguards during emergencies, sidewalk vending is prohibited on these piers.

In Mission Beach, Ventura Place serves as a direct vehicle drop off and access point for beach visitors to load and unload within feet of the Mission Beach Boardwalk. In addition, its narrow sidewalks and driveways connecting to one of San Diego's largest public beach parking lots, directly adjacent to Belmont Park, make this pedestrian corridor extremely impacted, especially during the summer months.

Coast Boulevard in La Jolla also experiences high levels of pedestrian activity during the summer months, especially due to its close proximity to the Children's Pool, sea caves and La Jolla Cove which is part of the La Jolla Underwater Sea Park- an Ecological Reserve and Refuge bringing thousands of divers and snorkelers every year.

By prohibiting sidewalk vending on segments of these coastal streets and corridors, there will be less conflict with sidewalk vendors and pedestrians which is a direct health, safety and welfare concern.

### ***Mission Beach Park***

Adjacent to Belmont Park, Mission Beach Park is prohibited to vending year-round as a result of Proposition G which passed in 1987. This voter approved initiative, which has been codified in SDMC section 63.50 expressly excludes retail and commercial uses within Mission Beach Park except for retail and commercial use specifically articulated in this Municipal Code section such as developments that have a vested right as set forth in SDMC section 63.50(f).

### ***Mission Bay Park***

At 4,235 acres, Mission Bay Park is the largest public man-made aquatic recreational area in the country with both passive and active recreational opportunities, hotels, beaches and dozens of leasehold specializing in aquatic activity. Yearly attendance is an estimated at 17 million visitors with a majority coming during the high tourism summer season between

Memorial Day and Labor Day. Because of the extremely high levels of pedestrian and visitor traffic during the summer moratorium, vending activities are prohibited within the park during this time.

Outside of the summer moratorium, vending would still be prohibited on the High Traffic and Shared Use Path facility on the Mission Bay Bike Paths and Bayside Walk.

These areas extend from the bayside of South Mission Beach to Crown Point in addition to the segment from Pacific Beach Drive south along the east side of Mission Bay Park towards Sea World within Mission Bay Park. Vendors stopping with carts and other conveyances, combined with a concentration of customers, would create significant obstacles and congestion for bicyclist traveling at higher rates of speed, joggers, and other pedestrians within these areas.

In addition, sidewalk vendors would have to adhere to a 100-foot separation requirement to ensure there is not an over concentration of commercial activity and to prevent interference with park visitors enjoying recreational opportunities such a running, walking, roller blading or other outdoor activities.

### **Sunset Cliffs Natural Park**

Located south of Ocean Beach in Point Loma, Sunset Cliffs Natural Park spans 68 acres and serves as an active and passive recreational resources for thousands of joggers, walkers, and sunset viewers every year. The park's linear section is 18 acres and very narrowly bordered on each side by either Sunset Cliffs Blvd and near vertical drops of 50 feet or more, to rocks and beaches below. The hillside portion is approximately 50 acres of west facing slope with eroded land formations sporadically covered throughout the park.

The park's scenic and natural characteristics are at the very center of what attracts its visitors. It's dramatic cliff formations, native vegetation, and expansive ocean views are a place "where people can enjoy San Diego's natural coastal environment as it once was, free from the effects of man" as stated within the Sunset Cliffs Natural Park Master Plan. For these reasons, the proposed ordinance prohibits any vending activity within the park as it would conflict public's use and enjoyment of natural resources and recreational opportunities within the park.

### **Additional Areas of Concern for Sidewalk Vending**

#### *Prohibition in Portions of East Village*

Sidewalk vending within portions of East Village present a challenge for the San Diego Police Department. The ordinance proposes to prohibit sidewalk vending within the area bounded by Harbor Drive, Park Boulevard, 10<sup>th</sup> Avenue, Market Street, 22<sup>nd</sup> Street, Commercial Street, 17<sup>th</sup> Street, Logan Avenue, and Sigsbee Street. Within this area, the San Diego Police Department has experienced ongoing issues with "vending" businesses on the sidewalks and street corners that illegally peddle loose cigarettes and alcohol, and sometimes act as felony facilitators to sell marijuana and narcotics.

In fact, police report data shows an unusually high concentration of narcotic sales, possession, and under the influence arrests that occur in the southern segment of the East Village and its adjacent neighborhoods. Between 2017 and 2019, there were over 2,000

arrests and citations for under the influence, possession, and sales relating to narcotics and tobacco, which is the highest concentration of such illicit activity in the City.

Allowing sidewalk vending within this area will present an obstacle for law enforcement and their ability to address the illegal sale of drugs, alcohol, and cigarettes due to their inherent covert nature. Sidewalk vending presents a unique challenge and could give illegal operators a front to operate and deal illegal drugs thereby requiring more resources and staffing to adequately address because there is little an uniformed officer can do unless they happen to witness a transaction or are part of an undercover operation.

The community public health and safety would greatly benefit by prohibiting sidewalk vending within this area which will reduce the opportunities for illegal transactions of tobacco, alcohol, and drugs.

### **Special Events, Swap Meets, Farmer’s Markets, and Permitted Events**

SB 946 allows the City to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit, farmers market, swap meet or permitted event. These events and community gatherings can be designated venues ranging in size up to hundreds of thousands of attendees. For this reason, and to ensure the integrity of the event, the ordinance proposes a 500-foot distance requirement from these permitted events around the City.

### **Entrepreneurship Zones**

The City Manager will be authorized to designate entrepreneurship zones in the City where sidewalk vendors may vend in these zones subject to the rules and regulations enacted by the City Manager. The zones will provide vendors an opportunity to be a part of a placemaking opportunity as well as providing customers an experience within a designated area. It is important to consider input from all stakeholders including, vendors, community members, businesses and public safety representatives.

### **Goods & Advertising**

To ensure oversight at all times, the ordinance contains a prohibition on sidewalk vendors from leaving goods unattended at any time. Goods are defined as items, personal property, merchandise, or any other similar item that is generally sold, including food and beverages. Furthermore, to prevent issues with false advertising as well as to ensure consistency with the City’s sign regulations prohibiting off-site advertisement and to balance the need for the public to use the sidewalks and other public amenities and for City crews to access such public amenities and utility structures, sidewalk vendors may only advertise goods for immediate on-site sale, and are prohibited from displaying goods on any above ground structure.

### **Sidewalk Vending Equipment**

The proposed ordinance sets parameters for the use of sidewalk vending equipment. Any vending equipment used by the sidewalk vendor may not exceed 8 feet in height to limit the risk of over-height objects falling on pedestrians. Sidewalk vendors may provide a chair for themselves, but may not set up customer seating areas to prevent undue congregation and

overcrowding of sidewalks that would make it difficult for pedestrians. In addition, to prevent damage to public property, the ordinance prohibits vending equipment from being attached to or making contact with any utility pole, street sign, trash can, traffic pole, or any other public structure. To prevent theft of public resources, sidewalk vendors are prohibited from connecting to an external source of power, water, or any other utilities located on public property. Also, to protect against unsafe distractions that could endanger pedestrians and drivers, the ordinance prohibits sidewalk vendors from using amplified sound-making devices such as loudspeakers, microphones, and public address systems in conjunction with vending. Lastly, to ensure sanitary conditions, sidewalk vendors engaged in the vending of food or beverages must have hand sanitizer located in a conspicuous location readily available for use by customers. Notwithstanding any specific requirements listed in the ordinance, no sidewalk vendor shall use vending equipment in such a way as to endanger the safety of person or property or to cause a public or private nuisance.

### **Portable Cooking Equipment**

The ordinance prohibits roaming sidewalk vendors from using any portable cooking equipment, flammable gas-fueled appliance, or any open flame because of the danger associated with constantly moving while cooking or constantly moving while transporting such hazardous materials. The ordinance does allow stationary sidewalk vendors to use propane, natural gas, or butane, but prohibits all sidewalk vendors from the use of other flammable fuels such as kerosene, deep frying, and gasoline. The ordinance also prohibits the use of wood burning ovens or charcoal barbecues based on public safety concerns over charcoal briquettes and wood embers having a greater potential to cause fires if they were to fall on the ground or get airborne particularly when it is windy. It also prohibits the use of portable generators because of noise and air quality health concerns for pedestrians. Prior to using portable cooking equipment, stationary sidewalk vendors must obtain any and all required permit(s) from the County Department of Environmental Health such as a valid Mobile Food Facilities permit. Such vendors must also comply with the California Retail Food Code in addition to regulations set forth in the proposed ordinance.

Only stationary sidewalk vendors may use an open flame, but must stay at least 20 feet away from permanent structures and at least 30 feet away from dry grass, grain, brush, or forested covered area at the recommendation of the Fire Marshall. To prevent fire hazards, sidewalk vendors are regulated in a variety of ways under Section 36.0108(f) as it relates to the use of portable cooking equipment, including being prohibited from smoking or vaping, not leaving such equipment unattended while in use, regularly cleaning such equipment and removing grease and food buildup, and storing, connecting, disconnecting, testing, and transporting gas tanks properly. The ordinance also limits the size of such tanks to 20 gallons or less and they must have a shut-off valve and pressure regulator to reduce the risk and impact of explosion to protect the public safety. Stationary sidewalk vendors using portable cooking equipment must also keep an easily accessible fire extinguisher on hand that is properly stored as well as regularly serviced and maintained.

In order to protect public health and safety as well as water quality and storm water mandates, sidewalk vendors are also required to maintain a clean and sanitary condition within a 10 foot radius of their vending operation as well as provide their own proper trash receptacle, and may not allow any liquids or grease within a storm drain conveyance system. They must also adhere to other best management practices such as disposing of grease properly, possessing spill kits comprised of paper towels, cloth towels, cat litter, or sand at all times while vending, removing any spill material off the ground once it is absorbed, and ensuring that any water or rinse residue used for vending activities such as cooler water, ice,

and food preparation water are not disposed in the curbs, gutters, streets, drains, or on any public property. They are also required to follow all regulations set forth by the County Department of Environmental Health if they wish to sell food.

### **Prohibited Sales**

To protect public health and safety, sidewalk vendors are prohibited from vending the following goods: alcoholic beverages, tobacco and tobacco products, vaping products, smoking and drug related paraphernalia, cannabis and cannabis products, weapons, including knives, guns, or explosive devices, BB devices or imitation firearms, pharmaceuticals, live animals, materials harmful to minors as defined in section 58.07 of the Code, or other products prohibited by local, state, and federal laws. The sale of weapons and imitation weapons poses a public safety issue because such items can cause injury to others or be confused for real weapons. Other items listed such as alcohol, tobacco, pharmaceuticals, and vaping products are already regulated or restricted in the way that they can be sold due to public health and safety concerns. There is a prohibition on the sale of live animals for both the safety of the public and animals.

### **Past Committee Actions - Economic Development & Intergovernmental Committee**

On July 25<sup>th</sup>, 2019, the Economic Development & Intergovernmental Committee unanimously approved the draft ordinance with the following requested changes:

- **Prohibit La Jolla Shoreline Parks year-round.**
  - This requested change was evaluated and was not included in the revised ordinance. SB 946 allows cities to regulate parks, but only to prevent an undue concentration of commercial activity, which may unreasonably interfere with the park's scenic or natural characteristics, or for concerns related to public health, safety and welfare. Following the proposed prohibition during the summer moratorium in La Jolla shoreline parks, visitors in the area will be significantly reduced thereby reducing public health, safety, and welfare concerns. Additionally, the ordinance proposes a year-round 100-foot buffer between sidewalk vendors which will address concerns related to preventing an undue concentration of commercial activity within the parks.
- **Amend Section 36.0102(j) to define Coast Boulevard as "from Cave Street to the 200 block of Coast Blvd. South in La Jolla."**
  - This is included in the ordinance under Section 36.0106(e) which prohibits sidewalk vending in this location during the summer moratorium based on the fact that this extension of Coast Boulevard is directly adjacent to several significant coastal resources such as shoreline parks, tidepools and small beaches including Nicholson Point, Cuvier Park and the Wedding Bowl at the park. These amenities draw thousands of visitors every year. By prohibiting sidewalk vending along the corridor, it will ensure the public continues to have the ability to freely walk this area and reduce pedestrian and sidewalk vendor conflict during the busiest time of the year.



- **Provide an evaluation of Amici Park and Veterans Park in Section 36.0107(f).**
  - Veterans Park is a shoreline park within the community of Ocean Beach and will be subject to a prohibition during the summer moratorium under Section 36.0107(i) in addition to citywide park regulations within the proposed ordinance under SDMC section 36.0107.
  - The property of Amici Park is owned by the San Diego Unified School District and operated under a lease agreement with the Little Italy Association so it was not included in the proposed ordinance. The City could only enforce the area of the park within the City's right of way which would be subject to restrictions from various above ground facilities, spacing between vendors and other general applicable laws.
- **Provide an evaluation of Ocean Boulevard in Pacific Beach in Section 36.0106(c).**
  - Ocean Boulevard Bike Path is included under the definition of high traffic bike and shared use path. This path extends from Crystal Pier to Law Street. In order to prevent a higher risk of serious injury due to the concentration of pedestrians, and higher rates of speed of bicyclists and other forms of mobility, sidewalk vendors are prohibited from vending within 10 feet of any high traffic bike and shared use path.
- **Provide language to define services and rentals, and an evaluation of services and rentals for prohibition.**
  - The parameters within SB 946 only apply to the sale of goods, which include food, beverages, or merchandise and does not express any intent or include any reference to services or rentals such as hair braiding, massages, fortune telling, tattooing, or renting surfboards on sidewalks and pedestrian paths. The proposed regulations define *Services* as "activities involving the performance of work for others or the provision of intangible items that cannot be returned once they are provided." Using this definition, language was added to Section 36.0105(o) of the ordinance that prohibits sidewalk vendors from selling or offering to sell services, or rentals of any goods or services.
- **Provide language to define public promenades and plazas and prohibit vending in public promenades and plazas.**
  - Language was added to Section 36.0102 of the ordinance to define a "plaza". A "plaza" is defined as 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. Under section 36.0107(c), no sidewalk vendor may vend within 100 feet of another sidewalk vendor.
  - The City can designate an area to be a promenade through the use of signage and other identifiers. Given that promenades typically are major pedestrian thoroughfares, the ordinance requires a 50 foot distance requirement between stationary sidewalk vendors to ensure adequate space and pedestrian access

between vendors and these larger concentrations of people.

- **Explore options for extending indemnification to cover Maintenance Assessment Districts and Business Improvement Districts.**
  - The ordinance was revised to include release and indemnification requirements that included “contractors” which would include all entities and vendors maintaining City sidewalks under a City contract.

#### **Some Additional Changes since Committee:**

- Requiring sidewalk vendors to place items for sale at least 36 inches off the ground to ensure public safety by avoiding the creation of tripping hazards and increasing visibility to pedestrians;
- Expanding the distance requirements from bus, tram, and other non-trolley stops to 65 feet, measured in a linear fashion along the curb, to reduce pedestrian conflicts for transit passengers and vending activities;
- Requiring sidewalk vendors to cease vending operations in a park by the designated park closing time or by sunset if there is no designated closing time;
- Required a 25-foot distance requirement for all sidewalk vendors from park decorative fountains, statues, monuments, memorials or art installations within parks to ensure preservation of the natural and scenic amenities;
- Expanding prohibited items that can be sold to prohibit the sale of live animals and harmful materials to minors as defined in Municipal Code section 58.07, which would include pornographic materials.
- Revising and establishing distance requirements for crosswalks, emergency exits and railroad crossings to enhance public safety.
- Prohibiting sidewalk vending on any property under a lease agreement with the City of San Diego to avoid violating the property rights of City lessees.
- Requiring vendors to use no more than 5 square feet or 25% of vending space, whichever is less, for personal items that are not directly related to vending operations to ensure that limited sidewalk space is primarily dedicated to vending and to balance the need of pedestrians and others to use the sidewalk
- Authorizing the City Manager to create Entrepreneurship Zones throughout the City of San Diego

#### **Outreach Efforts**

Following an initial review of the draft ordinance at the Economic Development and Intergovernmental Relations Committee, staff made additional outreach efforts to obtain input directly from sidewalk vendors and stakeholders affected by the proposed ordinance.

Following input from City Council offices, staff identified and hand delivered flyers to locations throughout the City where there were high numbers of sidewalk vendors such as, but not limited to La Jolla, Ocean Beach, Mission Beach and Pacific Beach, Old Town and Balboa Park. The flyers informed sidewalk vendors of several workshops where they could give input on the proposed ordinance. In October 2019, three workshops were held at three different locations: the Logan Heights Library, Fair @ 44 in City Heights, and the Serra Mesa Library. The workshops were attended by approximately 100 people.

In addition to hosting three workshops, the City launched [sandiego.gov/sidewalkvending](http://sandiego.gov/sidewalkvending) which was created to educate the public on the proposed ordinance. It included links where

stakeholders could review the draft ordinance, read Senate Bill 946, watch the hearing from the Economic Development & Intergovernmental Relations Committee, learn about upcoming workshops, and submit additional feedback via email to a dedicated email address: [sidewalkvending@sandiego.gov](mailto:sidewalkvending@sandiego.gov).

Based on feedback from these workshops and other communications, staff revised the ordinance to address concerns and create more flexibility for sidewalk vendors. This includes:

- Not requiring roaming sidewalk vendors to adhere to distance requirements from above ground structures;
- Allowing more flexibility for sidewalk vendors to use sidewalk space by not restricting all sidewalk vendors to a 6' x 4' area. Instead, sidewalk vendors would be allowed up to 24 square feet but could not exceed 8 feet in total length or 4 feet in total width;
- Allowing sidewalk vendors to begin vending earlier by revising the start time to 7 a.m. from 8 a.m. in residential areas and revising the start time to 6 a.m. from 7 a.m. in commercial areas;
- Replaced the year-round prohibition with a prohibition during the summer moratorium on the following streets: Newport Ave between Abbott Street and Sunset Cliffs Blvd in Ocean Beach; Ventura Place between Mission Blvd and Ocean Front Walk in Mission Beach; Garnet Ave 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;
- Removed requirement that a roaming sidewalk vendor cannot vend on a single residential block for longer than 60 minutes;
- Allowing sidewalk vendors to use a shade apparatus and to provide seating for sidewalk vendor personal use only;
- Reducing the distance requirement for sidewalk vending near Major Transit Stops from 100 feet to 50 feet.
- Removing distance requirement for roaming sidewalk vendors from fire lanes and fire hydrants

As of spring 2021, the new mayoral administration conducted a series of meetings with vendor advocate organizations. In addition, Council District Two took the lead on this effort as of June 2021. Our office has met with various stakeholders including the San Diego Immigrant Rights Consortium, Logan Heights CDC, City Heights CDC, Downtown Partnership, the Padres, Balboa Park Conservancy, San Diego Restaurant Association, Mission Beach Town Council, Ocean Beach Town Council, Pacific Beach Town Council, Point Loma Association, Supervisor Fletcher's Office, and County of San Diego Health & Human Services. We continue to meet with stakeholders to ensure that we create an ordinance that appropriately balances the needs of all those effected.

### **Indemnity But No Insurance Requirement**

The prohibitions and regulations on sidewalk vending activities within highly trafficked corridors, parks, and other areas are intended to reduce and prevent pedestrian and sidewalk vendor conflict thereby decreasing liability and accidents. According to the Risk Management Department, the City has not received any claims from sidewalk vendors or the public to date.

For this reason, sidewalk vendors are not required to obtain insurance. Furthermore, the cost of insurance could easily exceed a minimum of \$1,500 per a year and create an additional

barrier to economic entrepreneurship for sidewalk vendors. As part of the application process, sidewalk vendors will need to indemnify and hold harmless the City, its officers, agents, employees, contractors, and volunteers from any and all claims arising out of any vending activity or any illness or injury resulting therefrom.

**Minors Involved with Sidewalk Vending**

Given that sidewalk vendors operate outdoors and possibly throughout the City and in the evening hours, minors need to be supervised and accompanied by an adult for public safety reasons.

As such, minors, who are individuals under 18 years of age, will not be issued sidewalk vending permits, but they may assist with permitted sidewalk vendors. Any minor assisting with or engaged in vending must be physically accompanied by an adult sidewalk vendor with a valid vending permit. The sidewalk vendor is responsible for the actions of the minor as any and all actions of the minor including any violations committed by the minor are attributable to the sidewalk vendor.

**Enforcement**

As set forth by SB 946, violations associated with any part of the ordinance will be subject to escalating fines as set forth in the table below:

<b>Administrative Citations</b>		
<b>(Violations within one year)</b>	<b>With Permit</b>	<b>Without a Permit</b>
<b>First Violation</b>	\$100	\$250
<b>Second Violation</b>	\$200	\$500
<b>Third Violation</b>	\$500	\$1,000
<b>Fourth Violation</b>	\$500 and/or permit revocation	\$1,000

Unless there is a particularly substantive danger associated with the sidewalk vendor’s conduct, it is staff’s intent to allow all sidewalk vendors violating the ordinance a verbal warning within the first month the ordinance is in effect to educate sidewalk vendors about the new regulations. If a sidewalk vendor does not comply with the warning, staff may begin issuing administrative citations in accordance with SB 946. Following multiple violations of the proposed regulations, sidewalk vendors would be subject to additional fines as set forth in SB 946. If fines are not adequately addressing a particular violation or there is vending activity which constitutes an imminent and substantial safety or environmental hazard, the City may impound any vending equipment or goods that are contributing to this hazard. The sidewalk vendor would be required to pay the cost of impound and the cost of any storage. The Environment Services Department would be responsible for all impounds.

Enforcement will be conducted primarily by the Code Enforcement Division in addition to City of San Diego Park Rangers on a proactive and responsive basis to areas of high concern for public health, safety and welfare. The San Diego Police Department may issue warnings and assist with educating sidewalk vendors but will be focused on enforcement only for the most imminent hazards to public safety or when Code Enforcement officers and park ranger are unavailable.

## **Permit Revocation**

The ordinance outlines provisions related to the revocation of a permit. Grounds for permit revocation may include, but is not limited to, giving the City false information in a sidewalk vending application or for violating local, state and federal laws while operating as a sidewalk vendor, repeated failure to comply with sidewalk vending regulations, or failure to notify the City Manager within 5 business days of any material changes to the facts provided in a vending permit application subsequent to the issuance of a vending permit. Sidewalk vendors are allowed appeal a permit revocation as set forth in Chapter 1, Article 2, Division 4 of the San Diego Municipal Code.

## **Effective Date of the Ordinance**

The ordinance effective date will be set at a future council hearing in order to provide an opportunity for City staff to determine the permit fee and to set up the permit system. Since the ordinance is subject to California Coastal Commission approval, the ordinance would not take effect in the areas of the City within the Coastal Zone until such approval was obtained. A map of the Coastal Zone boundary is available on the California Coastal Commission website at the following link: <https://www.coastal.ca.gov/maps/czb/>

## **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 grow the local economy.

## **Fiscal Considerations:**

The cost to administer sidewalk vending applications has not yet been determined. City staff is currently determining cost associated with the implementation, education/outreach, permitting and enforcement.

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

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

## **Environmental Impact:**

### **1. Sidewalk Vending Ordinance:**

This ordinance to regulate sidewalk vending is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(2) as it would not result in a direct or reasonably foreseeable indirect physical change in the environment. Pursuant to SB 946 and with limited exception, cities are not permitted to disallow sidewalk vending- on a public sidewalk, except where the restrictions are directly related to objective health, safety, or welfare concerns. This ordinance is intended to comply with SB 946. In accordance with SB 946, the City has not been enforcing its regulations related to sidewalk vending that are in conflict with SB 946. As a result, sidewalk vendors are currently operating in the City and would continue to be

allowed to do so even with the adoption of this ordinance. Therefore, adoption of this ordinance would not result in any physical changes to the environment. Even if the ordinance is subject to CEQA, it is nevertheless categorically exempt pursuant to CEQA Guidelines section 15301(Existing Facilities) because it involves the use of existing sidewalks involving negligible or no expansion of an existing use-as the ordinance is proposing to regulate sidewalk vending activity that is already occurring and will allow for regulated uses of City sidewalks in a manner no more intense than is the case on the date the City Council adopts the ordinance, and none of the exceptions to the exemption listed in CEQA Guidelines 15300.2 would apply.

2. Repeal of Pushcart in the Public Right-of-Way Regulations:

The proposed repeal of regulations related to pushcarts in the public right-of-way are not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2) as it would not result in a direct or a reasonably foreseeable indirect physical change in the environment. Pushcarts located within the right-of-way are not permanent structures and are primarily designed to service existing pedestrian activity. Pursuant to Senate Bill (SB) 946 and with limited exception, cities are not permitted to disallow sidewalk vending on a public sidewalk except where the restrictions are directly related to objective health, safety or welfare concerns. The repeal of pushcart in public right-of-way provisions are intended to comply with SB 946. In accordance with SB 946, the City has not been enforcing its regulations related to sidewalk vending that are in conflict with SB 946, including its pushcart in the public right-of-way provisions so the repeal of such provisions will not have an effect on the environment.

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

N/A

**Previous Council and/or Committee Actions:**

1. Sidewalk Vending Ordinance:

Motion by Councilmember Ward to recommend Council approval of staff's proposed actions with the following amendments.

- Prohibit La Jolla Shoreline Parks year-round.
- Amend Section 36.0102(j) to define Coast Blvd as "from Cave Street to the 200 block of Coast Blvd. South in La Jolla."
- Provide language to amend Section 36.0102(j) to include cross streets in the area bounded by Kettner Blvd., Columbia Street, Beech Street, and Laurel Street in downtown.
- Provide an evaluation of including Amici Park and Veterans Park in Section 36.0107(f).
- Provide an evaluation of including Ocean Blvd. in Pacific Beach in Section 36.0106(c).
- Provide language to define services and rentals, and an evaluation of services and rentals for prohibition.
- Provide language to define public promenades and plazas and prohibit vending in public promenades and plazas.
- Explore options for extending indemnification to cover Maintenance Assessment Districts and Business Improvement Districts.

Second by Councilmember Bry.

Passed by the following vote:

Yea: Barbara Bry, Mark Kersey, Monica Montgomery, Christopher Ward

Nay: (None)

Recused: (None)

Not Present: (None)

Abstain: (None)

2. Repeal of Pushcarts in the Public Right-of-Way Regulations:

Planning Commission: The proposed project is being heard by the Planning Commission on July 25, 2019. The Planning Commission's recommendation will be provided prior to the City Council hearing.

Community Planners Committee (CPC) Recommendation: On June 25, 2019, the item was heard as an informational item and no comments were received.

Technical Advisory Committee (TAC): Planning Department staff notified the members of TAC via email on July 2, 2019, of this proposed action due to their July 10, 2019 meeting being cancelled.

Code Monitoring Team (CMT): Planning Department staff notified the members of CMT via email, on July 2, 2019, of this proposed action due to their July 10, 2019 meeting being cancelled.

**Key Stakeholders and Community Outreach Efforts:**

Outreach and input was received by the following organizations and departments but not limited to: sidewalk vendors, San Diego Regional Chamber of Commerce, San Diego Business Improvement District Alliance, Council on Policy Initiatives, City Heights Community Development Corporation, Logan Heights CDC, Community Planners Committee, San Ysidro Chamber of Commerce, Balboa Park Cultural Partnership, Downtown San Diego Partnership, Gaslamp Quarter Association, San Diego Convention Center, Little Italy Association, Metropolitan Transit System, San Diego Police Department, Development Services Department - Code Enforcement, Risk Management Department, Parks and Recreation Department, Fire-Rescue Department and Lifeguard Division, Transportation and Stormwater Department, County Department of Health and Human Services, Port of San Diego, California Coastal Commission and Council Offices.

Venus Molina

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Chief of Staff, Council District 2