

Chapter 3
Business Regulations, Business Taxes,
Permits and Licenses
Article 6:

Division 1: Sidewalk Vendor

§36.0101 Title

This Division shall be known as the Sidewalk Vendor Ordinance. This Division regulates sidewalk vendors in the public right-of-way.

§36.0102 Definitions

The following words and phrases whenever used in this Division shall be construed as defined in this section, unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

- (a) *Above ground structure* means any structure affixed to a *sidewalk* including street lights, tree wells, parking meters, utility structure, utility boxes, bike racks, scooter corrals, newspaper racks and public benches, tables, walls, and stairs.
- (b) *Ballpark District* means 6th Avenue through 14th Street between Market Street, Harbor Drive and Commercial Street in downtown.
- (c) *Beach access points* means public stairways, ramps, seawalls and other physical access points to the beach.
- (d) *Business Tax Certificate* means a tax certificate issued by the City Treasurer pursuant to Chapter 3, Article 1 of this Code.
- (e) *City Sports Facilities* means any of the following facilities that are owned, operated, managed, or leased by the City: the multipurpose

sports structure located in Mission Valley in the City of San Diego currently known as SDCCU Stadium; the open-air baseball facility, located in East Village in the City of San Diego currently known as Petco Park; the indoor arena located in Point Loma in the City of San Diego currently known as Pechanga Arena.

- (f) *Conveyance* means any non-motorized wheeled device used to carry persons or property and includes pushcarts, pedal-driven carts, wagons.
- (g) *Encroachment Permit* means any permit issued for encroachment on the public right-of-way including public right-of-way enhancement program permits, right of way permits, but excluding permits for *hardscape* improvements.
- (h) *Goods* means *goods*, wares, personal property, merchandise or any other similar item which is generally sold.
- (i) *Hardscape* mean paving material including tiles mortared pavers, wood timbers, colored or patterned concrete with a tile, brick, or stone appearance, or a paving material with enhanced concrete that has an exposed aggregate, colored, or salt finish.
- (j) *Heavily Trafficked Sidewalk* means Fifth and Fourth streets between Broadway and Harbor Drive located in downtown in the City of San Diego; Kettner Blvd., India Street and Columbia Street from Beech Street to Laurel Street located downtown in the City of San Diego, Imperial Ave. from Park Blvd.. to 17th Street. located downtown in

the City of San Diego, San Diego Ave. between Conde Street and Twiggs Street in Old Town in the City of San Diego; Newport Ave from Abbott Street to Sunset Cliffs Blvd in Ocean Beach; Ventura Place from Mission Blvd to Ocean Front Walk in Mission Beach; Garnet Ave from Ocean Front Walk to Cass Street in Pacific Beach; Coast Blvd from Cave Street to Coast Blvd South in La Jolla.

- (k) *Individual* means a natural person at least eighteen years of age.
- (l) *Loading zone* means the space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.
- (m) *Major transit stop* means a site that contains any of the following: an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.
- (n) *Permittee* means the authorized recipient of a duly issued *vending permit*.
- (o) *Permitted Event* means any event that has a special event permit, park use permit, or lake use permit including farmers markets, street fairs, races, and private events.
- (p) *Portable cooking equipment* means any flammable-gas-fueled appliance used to heat, cook, or prepare food or beverages on a *sidewalk vendor conveyance*.

- (q) *Public nuisance* has the same meaning as stated in Municipal Code Section 11.0210.
- (r) *Public park* means any property designated, dedicated or developed by or on behalf of the City of San Diego for park or open space use.
- (s) *Public right-of-way* means a public easement for streets, alleys, or other uses, other than a *sidewalk*.
- (t) *Residential* means any street, block, or area occupied predominantly by private residences.
- (u) *Roaming sidewalk vendor* means a *sidewalk vendor* who moves from place to place and stops only to complete a transaction.
- (v) *School* means an institution of learning that offers instruction in those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education. This definition does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college, or university.
- (w) *Sidewalk* means a paved or *hardscaped* path or walkway owned by the City or other public entity that is specifically designed for pedestrian travel. It excludes any area primarily designed for use by vehicles, bicycles, the *conveyance* of storm water, planted with landscaping, or primarily consisting of dirt or sand.
- (x) *Sidewalk vendor* means a person who sells food, beverages or *goods* from *vending equipment* or from one's person, upon a public *sidewalk*.

It includes both *roaming sidewalk vendors* and *stationary sidewalk vendors*.

- (y) *Summer Moratorium* means the calendar days between the Saturday prior to Memorial Day and the preceding Saturday and Sunday through Labor Day.
- (z) *Stationary sidewalk vendor* means a *sidewalk vendor* who vends from a fixed location.
- (aa) *Vend* or *vending* means an offer to sell or the sale of food, beverages or *goods*, expose or display for sale, solicit offers to purchase, or to barter *goods*, food or beverages, or to require someone to negotiate, establish or pay a fee before providing *goods*, food or beverages, even if characterized as a donation, on a public street, alley, highway, parking lot, *sidewalk*, or *public right-of-way*.
- (bb) *Vending equipment* means any *conveyance*, table, stand, display, showcase, rack, or any other free-standing equipment used for *sidewalk vending* purposes.
- (cc) *Vending permit* means a written City of San Diego approval required prior to *vending*.

§36.0103 Vending Permit Requirement

- (a) All *sidewalk vendors* must obtain a *vending permit* prior to *vending* on any *sidewalk*. Permits shall be issued by the _____ or designee, unless otherwise specified in the San Diego Municipal Code.
- (b) A *vending permit* shall be valid for one calendar year from the date of

issuance and must be renewed annually. A *vending permit* may only be issued to an *individual* and shall not be sold, assigned or transferred. A *vending permit* that is sold, assigned, or transferred is void.

- (c) To obtain a *vending permit*, an applicant must submit the following information on a permit application form provided by the City's Finance Department:
- (1) The name, address and telephone number of the applicant;
 - (2) Proof of valid, government-issued identification (i.e., driver's license, state identification card, taxpayer identification number, social security card, birth certificate or passport);
 - (3) If the *sidewalk vendor* is an agent of a company, partnership, or corporation, the name and business address of the principal.
 - (4) A current valid *business tax certificate*;
 - (5) Proof of a valid California Department of Tax and Fee Administration seller's permit that notes the City of San Diego as a location or sub-location, which shall be maintained for the duration of the *vendor's* permit;
 - (6) For those *sidewalk vendors* selling food, proof of a valid San Diego County Health Certificate and San Diego County Food Handlers Card;
 - (7) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

- (8) Such other information as the City Manager or designee deems reasonably necessary to administer this Division.
- (9) Each *vending permit* application shall be accompanied by a non-refundable permit fee as established by resolution of the City Council.

(d) Separate Application Required

A separate application is required for each *individual* who intends to *vend* even if the *individual*:

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

(e) Release and Indemnification Requirements

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

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

§36.0104 Permit Denial and Revocation

- (a) Any false or misleading statements or information provided in a *vending permit* application shall be grounds for denial of the application and/or imposition of penalties as outlined in accordance with this Division.
- (b) A *vending permit* application shall be denied if the applicant has had a prior *vending permit* revoked within the past 36 calendar months. A *vending permit* shall be revoked or denied for any of the following reasons:
 - (1) False information or facts supplied by the applicant upon which the issuance of the *vending permit* was based;
 - (2) Failure of the applicant to promptly notify the City Manager or designee of any material changes to the facts provided in a *vending permit* application subsequent to the issuance of a *vending permit*;
 - (3) Repeated failure of the applicant to comply with the regulations set forth in this Division;
 - (4) Violations of other local, state, or federal laws while operating

as a *sidewalk vendor* including through the use of any *vending equipment* for the commission of such violations that demonstrate endangerment of public health or safety.

- (c) If the application is for the renewal of a vending permit, the applicant must pay all previous administrative fines, completed all community service or completed any other alternative disposition associated in any way with a previous violation of this Division.
- (d) Revocation of a *vending permit* shall be served in writing no less than 30 calendar days before revocation to the address listed on the initial application or to any subsequent address provided to the City by the *permittee*.
- (e) Any applicant whose application for a *vending permit* is denied or whose permit is revoked may appeal such decision to the City Manager or designee by filing a written notice of appeal within 10 calendar days after receipt of the notice of denial or revocation. The City Manager or designee shall review and render a decision on the appeal within 90 calendar days. The decision made by the City Manager or designee shall be final.

§36.0105 Sidewalk Vending Generally

- (a) *Sidewalk Vendors* must visibly display their *sidewalk vending permit* at all times when *vending* including any photo identification issued by the City.
- (b) *Vending* activities on *residential* blocks may only occur between the hours of 8:00 a.m. and sunset.

- (c) *Vending* activities on non-residential blocks may only occur between the hours of 8:00 a.m. and 10:00 p.m. or the hours of operation imposed on other businesses on the same street block, whichever is least restrictive.
- (d) A *vending permit* does not provide an exclusive right to operate on any *sidewalk* or portion thereof.
- (e) No *vending* shall take place except on a *sidewalk* in accordance with the provisions of this Division or pursuant to the issuance of a City permit under the Code.
- (f) Any minor assisting with or engaged in *vending* must be physically accompanied by an *individual* with a valid *vending permit*. Any and all actions of the minor including any violations committed by the minor are attributable to the *individual* with a valid *vending permit*.
- (g) Only *roaming vendors* may operate in *residential* areas.
- (h) *Sidewalk vendors* are responsible for ensuring that the 10-foot area immediately surrounding the *vending* space is kept clean and free of trash and debris associated with their *vending* operation.
 - (1) All *sidewalk vendors* must provide a trash receptacle for customers and must ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash without resort to existing trash receptacles located on any block for use by the general public.
 - (2) *Sidewalk vendors* shall not dispose of customer trash in existing trash receptacles on *sidewalks*.

- (i) *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.
- (j) *Sidewalk vendors* are prohibited from displaying any *goods*, food, or beverage for sale on the ground or on any *above ground structure*.
- (k) No *vending* shall take place in a parked vehicle or to any individuals traveling within motor vehicles along a public roadway.
- (l) A *sidewalk vendor* is prohibited from leaving *vending equipment* or *goods* unattended at any time.
- (m) A *sidewalk vendor* is prohibited from connecting to an external source of power, water, or any other utilities while located on public property.
- (n) To maintain accessibility standards, every *sidewalk vendor* must ensure that no obstruction is placed on the *sidewalk* that would reduce the width of the *sidewalk* to less than forty-eight (48) inches, except for the temporarily brief duration of time for a *roaming sidewalk vendor* to conduct a sale. Notwithstanding the forgoing all *sidewalk vendors* must immediately move to provide broad access to the *sidewalk* so as not to impede the flow of pedestrian or other traffic.
- (o) No *stationary vendor* shall be located on a *sidewalk* less than six (6) feet in width.

§36.0106 Vending Locations

- (a) *No roaming vendor* shall stop to make sales and no *stationary sidewalk vending* of any kind shall take place, in the following locations:

- (1) In the *public right-of-way* or any area that blocks pedestrian or vehicle access;
- (2) Any public property that does not meet the definition of a *sidewalk*, including but not limited to any alley, beach, pier, square, street, street end;
- (3) Any parking lots;
- (4) On any slope greater than five (5) percent;
- (5) Any location that obstructs traffic signals or regulatory signs;
- (6) The *Ballpark District* on event and game days;
- (7) Within 18 inches from the edge of a curb;
- (8) Within 5 feet of any:
 - a. fire hydrant or fire escape;
 - b. *Above ground structure*.
- (9) Within 15 feet of any:
 - a. other *sidewalk vendor*;
 - b. intersection, driveway or building entrance, or within any space designed for vehicular parking;
 - c. *Heavily trafficked sidewalk*;
 - d. any *beach access points*;
 - e. *loading zone*, bus stop, parking space or access ramp designed for persons with disabilities;
 - f. outdoor dining or patio area
 - g. public restroom;

- h. location with a valid *encroachment permit* displayed.
- (10) Within 25 feet of:
- a. Any fire lane;
- (11) Within 100 feet of:
- a. The vehicle entrance of any fire station, police department, hospital, lifeguard station or any other structure dedicated to health and safety emergency matters;
 - b. Any *major transit stop*;
 - c. Any City street or *sidewalk* closures.
- (12) Within 500 feet of:
- a. Any *permitted event*;
 - b. Any *school* while children are going to or from the *school*, during a recess period or within 30 minutes before or after the *school's* opening or closing hours;
 - c. The Convention Center, located on Harbor Drive, on convention days;
 - d. *City Sports Facilities* on event and game days.
- (b) A *roaming sidewalk vendor* shall not vend on any exclusively *residential* street block for longer than 60 minutes at any given time.
- (c) *Vending* activities are prohibited in the following locations: Sunset Cliffs Natural State Park; Ocean Front Walk in Mission Beach, Pacific Beach; La Jolla Shores Boardwalk.

§36.0107 Vending in Public Parks and Beach Areas

Vending activities in *public parks* and beaches must also comply with the following:

- (a) *Vending* shall be permitted between 8:00 am and sunset in public parks and beach areas.
- (b) The City Manager has the authority to enact rules and regulations to prohibit *vending* in any space which would obstruct, damage or otherwise adversely affect the public's use and enjoyment of natural resources and recreation opportunities or contribute to an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the *public park*.
- (c) *Vending* activities that adversely affect the health, safety and welfare of persons engaged in active sports activities and spectators of active sports activities are prohibited.
- (d) *Stationary sidewalk vendors* shall not be allowed within any area of a *public park* if the park operator has signed an agreement for concessions that exclusively permits the sale of food or *goods* by a specified concessionaire.
- (e) *Vending* activities are prohibited in the following locations in Balboa Park: the 25-foot area surrounding the Botanical Building and Lily Pond, El Prado, Village Place, Pan American Way, Presidents way, the Prado, and all covered walkways.
- (f) *Sidewalk vendors* may need to obtain an additional *park sales* permit to *vend* in the following parks: Balboa Park, Mission Bay Park, Ocean Beach

Park, Mission Beach Park, Scripps Ellen Browning Park, Kellogg Park, Ocean Boulevard Park; South Mission Beach Park, and Torrey Pines City Park.

- (g) *Vending* is prohibited during the *Summer Moratorium* in Balboa Park, Mission Bay Park, Presidio Park, Belmont Park and the Shoreline Parks, which are those parks contiguous to the shoreline or beach in the communities of Ocean Beach, Mission Beach, Pacific Beach, and La Jolla,

§36.0108 Sidewalk Vending Equipment and Goods

- (a) Notwithstanding any specific requirements of this Article, 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.
- (b) *Sidewalk vendors* are prohibited from displaying food or *goods* directly on the ground.
- (c) No *sidewalk vendor* shall occupy a space exceeding six feet in length and four feet in width including *vending equipment* but excluding the space the *sidewalk vendor's* physical body occupies.
- (d) No portion of the *vending equipment* may extend or overhang more than 4", unless the extended object is located 27" or less from the ground.
- (e) *Sidewalk vendors* are forbidden from using sound-making devices in conjunction with vending, including but not limited to loudspeakers, public address systems, bells, chimes or other noise-making devices.

- (f) *Sidewalk vendors* are prohibited from erecting freestanding structures adjacent to *vending* activities, including but not limited to signs, umbrellas, ice chests, chairs, tables or benches.
- (g) No *vending equipment* shall be attached to or make contact with any utility pole, street sign, bus stop, trash can, traffic pole or any other public structure.
- (h) *Roaming sidewalk vendors* are prohibited from using any *portable cooking equipment*, flammable-gas-fueled appliance, or any open flame.
- (i) All *sidewalk vendors* are prohibited from:
 - (1) deep fat frying;
 - (2) Using portable generators;
 - (3) Using outdoor wood burning ovens or charcoal barbecues;
 - (4) Using gasoline or kerosene.
- (j) *Stationary sidewalk vendors* may use *portable cooking equipment* in accordance with the following:
 - (1) Operate a minimum of 20 feet from any permanent structure and a minimum of 30 feet from a grass, grain, brush, or forested covered area.
 - (2) Not leave *portable cooking equipment* unattended while in use.
 - (3) Not wear loose-fitting clothing when cooking.
 - (4) Not smoke while operating the *portable cooking equipment*.
 - (5) Regularly clean the *portable cooking equipment* and remove grease and food buildup.

- (6) Only propane, natural gas, and butane cylinder tanks shall be used.
- (7) Each tank used or stored on the *conveyance* must be 20 gallons or less. A *sidewalk vendor* may have up to two 20-gallon tanks on a *conveyance*.
- (8) Tanks must be stored in an upright position during use and positioned in such a way as to prevent it from falling, tipping, and tampering.
- (9) Tanks must be disconnected while the *conveyance* is in transit or not in use.
- (10) Tanks must have a shut-off valve and a pressure regulator. Hoses must be of an approved type of use with the equipment. A *sidewalk vendor* must test all connections to the tank for potential leaks using soap and water before each use.
- (11) Any *conveyance* that stores a tank must have two ventilations openings on opposite sides at the cylinder valve level and at least one ventilation opening required at the floor level. Each opening shall be a minimum of 10 square inches, screened with a minimum 16 mesh and shall vent to the exterior of the *conveyance*.
- (12) Conform to the following fire extinguisher Requirements:
 - (i) Keep an easily accessible, properly charged and maintained 10 BC-rated fire extinguisher on the *conveyance* at all times and know how to use it. The *sidewalk vendor* must ensure the extinguisher has been serviced within the last

year and have a California State Fire Marshal service tag attached to it.

(ii) Mount the extinguisher securely to the *vending equipment*.

(iii) Locate the extinguisher away from the cooking area.

- (k) *Sidewalk vendors* are prohibited from selling the following *goods*:
alcoholic beverages; tobacco or electronic vaping products; smoking and drug related paraphernalia; cannabis products; weapons, including knives, guns, or explosive devices; BB devices and imitation firearms; pharmaceuticals; or other products prohibited by local, state and federal laws.

§36.0109 Penalties and Fines

- (a) Any violation of this Division by any *individual* holding a valid *vending permit* shall be punished as follows:
- (1) An administrative citation and \$100 penalty for a first violation.
 - (2) An administrative citation and \$200 penalty for a section violation within one year of the first violation.
 - (3) An administrative citation and \$500 penalty for a third and each subsequent violation within one year of the first violation.
- (b) Any person found *vending* without a *vending permit*, if required pursuant to Section §36.0103, shall immediately cease vending and the activity is punishable by the following in lieu of the administrative fines set forth in subdivision (a):
- (1) An administrative fine of \$250 for a first violation.

- (2) An administrative fine of \$500 for a second violation within one year of the violation.
 - (3) An administrative fine of \$1,000 for a third violation within one year of the first violation.
 - (4) An administrative fine of \$1,000 for each subsequent violation within one year of the first violation and impoundment of *vending equipment* pursuant to Section §36.0111 of this division.
 - (5) If *vendor* provides proof of a valid *vending permit* issued by the City within 60 calendar days of violation, the administrative fines shall be reduced to the administrative fine schedule set forth in subdivision (a).
- (c) Any *sidewalk vendor*, owner or operator who fails to pay an administrative fine pursuant to subdivisions (a) and (b) of this section shall not be charged with an infraction or misdemeanor; additional fines, fees, assessments or any other financial conditions beyond those authorized in Subdivisions (a) and (b) of this section shall not be assessed.

§36.0110 Vending Permit Revocation

- (a) The issuance of four or more administrative citations or verifiable Municipal Code violations related to *sidewalk vending* within a 12-month period shall result in revocation of all *vending permits* pursuant to this division.
- (b) *Vending permit* revocation is subject to a 30-day prior written notice. A *permittee* may appeal such decision to the City Manager or designee by

filing a written notice of appeal within 10 calendar days after receipt of the notice of denial or revocation. The City Manager or designee shall review and render a decision on the appeal within 90 calendar days. The decision made by the City Manager or designee shall be final.

- (c) In the event a *vending permit* is revoked, an application to reestablish any *vending permit* pursuant to this division shall not be accepted for a minimum period of 36 months from the date the prior *vending permit* was revoked.

§36.0111 Impounding of Vending Equipment

- (a) In addition to the administrative fines taken pursuant to Section §36.0109 above, any enforcement office as defined in the San Diego Municipal Code Section XXXXXX, may, upon an individual's fourth or greater violation of this division, impound *vending equipment* and any perishable or non-perishable *goods* therein.
- (b) Any owner of impounded *vending equipment* or any perishable or non-perishable *goods* may, within 10 days, request an administrative hearing before a hearing office appointed by the City.
- (c) By 5:00 p.m. on the next business day following impoundment, a violator will be contacted regarding the details given in the impoundment citation. The equipment will then be released to the owner provided that proper proof of ownership is presented, and the City receives payment in full of all administrative costs incurred as a result of the violation. Any unclaimed items will be considered abandoned and forfeited to the City after 90 days following impoundment.

§36.0112 Applicability

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

§36.0113 Non-Applicability

- (a) The following persons, entities or activities are exempt from the requirements of this Division:
 - (1) Any vendor or *individual* engaged solely in artistic performances, free speech or petitioning activities;
 - (2) Agencies of any federal, state or local governments;

§36.0113 Vending that Constitutes an Imminent and Substantial Safety Hazard

The City may request any *sidewalk vendor* to leave the premises or to remove any *vending equipment*, food, beverages, or *goods* if such *sidewalk vendor* is creating an imminent and substantial safety hazard by the location of the *vending equipment* or the nature of the food, beverages, or *goods* being offered for sale. If the *sidewalk vendor* refuses to leave the premises or to remove *any vending*

equipment food, beverages, or *goods* constituting an imminent and substantial safety hazard, the City may impound the *vending equipment* or the *goods* being offered for sale. Any *vending equipment* or *goods* that have been impounded will be subject to the provisions of Section 36.0111.

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