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12 UNITED STATES DISTRICT COURT

13 SOUTHERN DISTRICT OF CALIFORNIA

14 SARA DUVALL,

15 Plaintiff,

16 vs.

17 CITY OF SAN DIEGO,

18 Defendant.

19 Case No.: 26cv1112-AGS-BJW

20 Hon. Andrew G. Schopler

21 U.S. District Court Judge

22 Edward J. Schwartz

23 United States Courthouse

24 Courtroom: 5C

25 Date: June 24, 2026

26 Time: 2 p.m.

27 APPLICATION FOR A
28 PRELIMINARY INJUNCTION.

CERTIFICATION

I, Michele Akemi McKenzie, hereby certify that undersigned counsel has complied with this Court’s Meet-and-Confer Requirement prior to filing this application by meeting via videoconference with Deputy City Attorney Manuel Arambula for Defendant City of San Diego on Tuesday, April 7, 2026 at 4 p.m.

DATE: April 15, 2026 McKENZIE SCOTT PC

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27 MEMORANDUM OF POINTS
28 AND AUTHORITIES IN
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1. Ms. Duvall’s political art is protected *speech* and thus Defendant City of San Diego’s “Sidewalk Vending Regulations” do not apply.... 15

2. Ms. Duvall’s expressive artwork—even if it lacks a clear discernable message—is still a protected, purely expressive activity and qualifies as “visual art” worthy of First Amendment protections. 18

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3. Because Ms. Duvall’s art is *not* mass-produced, communicates “message[s], idea[s], or concept[s] to others,” and has at most nominal “functional utility apart from any communicative value,” it is not a “handcraft” as defined in San Diego’s Municipal Code Section 63.0502 and thus not properly subject to the “Sidewalk Vending Regulations.”..... 19

4. The City of San Diego’s attempt to ban artists from using entire modes of communication is unconstitutional. 20

B. Plaintiff is suffering and will continue to suffer irreparable harm in the absence of preliminary relief: Ms. Duvall’s political speech and pure expressive activities have been, are, and will continue to be chilled because of the enforcement of the “Sidewalk Vending Regulations” against her. 22

C. The balance of equities tips in Plaintiff’s favor: As a “visual artist,” Ms. Duvall would still need to comply with Defendant’s “Expressive Activity” Ordinance. 23

D. An injunction, which would allow Ms. Duvall to return to public spaces within the City of San Diego to share her artwork subject to the “Expressive Activity” ordinance and not the “Sidewalk Vending Regulation,” is in the public interest. 24

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TABLE OF AUTHORITIES

Cases

ACLU of Nev. v. City of Las Vegas,
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Anderson v. City of Hermosa Beach,
621 F.3d 1051 (9th Cir. 2010) 17

Cal. Chamber of Commerce v. Council for Educ. & Rsch. on Toxics,
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City of Ladue v. Gilleo,
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Cohen v. California,
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Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills,
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Doe v. Harris,
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Elrod v. Burns,
427 U.S. 347 (1976) 22

Gaudiya Vaishnava Soc’y v. San Francisco,
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1 *Hague v. Comm. for Indus. Org.*,
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1 **I. INTRODUCTION.**

2 Plaintiff Sara Duvall is a San Diego artist who expresses her
3 political beliefs, lived experiences, and perspectives on the world around
4 her through her art. As a San Diego native, she started going to Balboa
5 Park as a child with her mother. As an adult, she enjoys returning to
6 Balboa Park to share her life's work with the public and her fellow
7 artists. But following the passage of Ordinance No. 21775 in February
8 2024, Park Rangers began citing and fining Ms. Duvall for showing her
9 original works of art in Balboa Park. Balboa Park has long been
10 recognized as a traditional public forum in this community. But now,
11 Ms. Duvall no longer shows her artwork with her fellow artists at
12 Balboa Park for fear of punishment.
13

14 The citations and fines levied upon Ms. Duvall stem from the
15 City's classification of her as a "sidewalk vendor" instead of a "visual
16 artist." If Ms. Duvall were expressing herself by *painting on a canvas* or
17 by *drawing with crayon on paper* or even by twisting a *balloon into an*
18 *animal* (including if she was selling the canvas, paper, or balloon
19 animal) instead of through her clay and mixed media artwork, she
20 would be treated as a "visual artist" and not subject to the City's
21 "Sidewalk Vending Regulations." But *her choice of medium* has, in the
22 City's eyes, transformed her from a "visual artist" into a "sidewalk
23 vendor."
24

25 Due to the repeated citations and fines, as well as threats by the
26 San Diego Park Rangers that her artwork could be impounded,
27
28

1 Ms. Duvall has stopped exercising her First Amendment right to share
2 and sell her political and expressive art in Balboa Park.

3 Ms. Duvall now respectfully appears before this Court seeking
4 preliminary injunctive relief to prevent ongoing violations of her First
5 Amendment rights. Ms. Duvall seeks an order enjoining the City of San
6 Diego from enforcing the “Sidewalk Vending Regulations” against
7 Ms. Duvall’s political speech and purely expressive art, both of which
8 are protected by the First Amendment. She simply seeks to share her
9 political beliefs and pure expressive artwork with the public in Balboa
10 Park, and other public forums within the City of San Diego, *subject to*
11 *the same rules and requirements as other artists.*
12

13 **II. RELEVANT SAN DIEGO MUNICIPAL ORDINANCES FOR**
14 **CONSIDERATION OF THIS APPLICATION.**

15 Defendant City of San Diego passed Ordinance No. 21775 on
16 February 28, 2024.¹ See Exhibit A. Ordinance No. 21775 created the
17 “Expressive Activity on Public Property” code (San Diego Municipal
18 Code § 63.0501, *et seq.*). See Exhibit B. For the purposes of this
19 application, the relevant portions of the “Expressive Activity” code
20 include (emphasis in original):
21

22 **§ 63.0501 Findings and Purpose**

23 (a)The Council finds the City is committed to
24 protecting and preserving the rights of persons
25 engaged in *expressive activity* on public
26 property, as protected by the First Amendment

27
28 ¹ Plaintiff seeks to have this Court take judicial notice of the relevant
municipal ordinances and codes.

1 to the United States Constitution and by the
2 California Constitution. *City parks, plazas, and*
3 *sidewalks* have served as a traditional forum for
4 performances, visual artists, and other
5 *expressive activity*. . . .

6 (b) . . . The Council finds that authorizing the City
7 Manager to designate areas for persons
8 engaged in *expressive activity* using equipment
9 or furniture in certain *parks, plazas, and high-*
10 *traffic areas* will reduce tensions and physical
11 altercations associated with competing for
12 limited space, and will ensure those engaged in
13 expressive activity are able to engage their
14 intended audiences without having to compete
15 with commercial vendors. . . .

16 . . .

17 **§ 63.0502 Definitions**

18 . . .

19 *Expressive activity* means all forms of speech and expressive
20 conduct, including . . . (4) the sale of artwork . . . or other items
21 that are inherently communicative in nature and have only
22 nominal value or purpose apart from its communication.
23 Items that are inherently communicative in nature include . .
24 . bumper stickers, buttons . . . *visual art* sold by the artist,
25 including prints of the artist's *visual art*, political
26 campaigning activity such as distribution of campaign signs,
27 stickers, or other campaign materials, face painting, and
28 painting henna tattoos. *Expressive activity* does not include:
the sale of food; the sale or creation of *handcrafts*, skin care
and beauty products; the sale of natural found items, such as
stones and gems; the provision of personal services, such as
massage or hair styling; the application of substances or
handcrafts to others such as piercings or skin care products;
teaching yoga or exercise classes; or the creation or sale of
mass-produced merchandise or *visual art*.

1 . . .

2
3 *Handcrafts* means objects made either by hand or with the
4 help of devices used to shape or produce the objects through
5 such methods as weaving, carving, stitching, sewing, lacing,
6 welding, or beading, including necklaces, earrings, bracelets,
7 rings, and other jewelry used or intended for personal
8 adornment, pottery, silver or metal work, leather goods, and
9 trinkets. *Handcrafts* are objects not likely to communicate a
10 message, idea, or concept to others, are often mass-produced
11 or produced with limited variation, and often have functional
12 utility apart from any communicative value they might have.

11 . . .

12 *Visual art* means sculptures, drawings, or paintings applied
13 to paper, cardboard, canvas, or other similar or equivalent
14 medium through the use of brush, pastel, crayon, pencil,
15 stylus, or other object.

16 Ordinance No. 21775 also modified the existing “Sidewalk
17 Vending Regulations.” For the purposes of this application, the relevant
18 portions of the “Sidewalk Vending Regulations” code (San Diego
19 Municipal Code § 36.0101, *et seq.*) include (emphasis in original):

20 **§ 36.0101 Title and Purpose**

21 . . .

22 (b) Purpose and Intent. It is the purpose and intent of this
23 Division to provide for the regulation of sidewalk vendors
24 on public property pursuant to California Government
25 Code sections 51036 through 51039.

26 //

27 //

1 **§ 36.0102 Definitions**

2 ...

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

6 ...

7 *Sidewalk vendor* means a person who sells *goods* or provides
8 *services* from *vending equipment* or from one’s person upon a
9 *sidewalk*. It includes both *roaming sidewalk vendors* and
10 *stationary sidewalk vendors*.

11 ...

12 *Sidewalk vendor* means a person who sells goods or provides
13 *services* from *vending equipment* or from one’s person upon a
14 *sidewalk*.

15 ...

16 **§ 36.0103 Vending Permit Requirement**

17 ...

18 (b) All *sidewalk vendors* shall obtain a *vending permit* prior to
19 *vending* on any *sidewalk*. Permits shall be issued by the City
20 Manager or designee, unless otherwise specified in the Code.

21 ...

22 See Exhibit C. San Diego Municipal Code Section 36.0103
23 subsections (d)-(e) describe requirements to obtain a vending
24 permit, subsection (g) describes release and indemnification
25 requirements. But, as noted below, “visual artists” and others
26 engaged in “expressive activity” are exempted from these
27 permitting requirements.²

28 ² San Diego’s exemption for those engaged in “expressive activity” including “visual artists” from the permitting requirements is grounded in Ninth Circuit law. *Cf. Santopietro v. Howell*, 73 F.4th 1016, 1023 (9th Cir. 2023) (“we have never upheld a law that subjects individuals or small

1 **§ 36.0113 Non-Applicability**

2 The following persons, entities, or activities are exempt from
3 the requirements of this Division:

4 (a) any person engaged in *expressive activity* authorized by
5 Chapter 6, Article 3, Division 5 of this Code;

6 . . .

7 California Government Code section 51036 (referenced in San
8 Diego Municipal Code § 36.0101(b) *supra*) provides, in relevant
9 part:

10 **Chapter 6.2: Sidewalk Vendors**

11 **§ 51036.** For purposes of this chapter, the following
12 definitions apply:

13 (a) “Sidewalk vendor” means a person who sells food or
14 merchandise from a pushcart, stand, display, pedal-
15 driven cart, wagon, showcase, rack, or other
16 nonmotorized conveyance, or from one’s person, upon a
17 public sidewalk or other pedestrian path.

18 //

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25 _____

26 groups who wish to engage in non-commercial expressive activity in
27 public fora to advance notice and permitting requirements”) (citation
28 omitted).

1 **III. STATEMENT OF FACTS.**

2 **A. San Diego’s Balboa Park is a public forum**
3 **traditionally used for expressive activity.**³

4 Plaintiff Sara Duvall is an artist who enjoys showing her artwork
5 in San Diego’s Balboa Park in the company of her fellow artists. *See*
6 Exhibit D/Declaration (“Dec.”) at ¶¶ 14 & 25. A lifelong San Diegan,
7 Ms. Duvall has a personal connection with the park. *See* Dec. at ¶¶ 2-4.
8 She first started going to Balboa Park as a child with her mother. *See*
9 Dec. at ¶ 16. Growing up, her family took full advantage of what the
10 park has to offer, enjoying picnics, long walks and even celebrating
11 birthdays in Balboa Park. *See* Dec. at ¶¶ 16-20. At the end of her
12 mother’s life, Ms. Duvall took her to the park each week. *See* Dec. at ¶
13 21. In recent years, Ms. Duvall has enjoyed the friendship and
14 fellowship of artists in the park. *See* Dec. at ¶ 14. When showing her art
15 in Balboa Park, she would often engage in conversations about her own
16 art and about art more generally with the public. *See* Dec. at ¶¶ 25-35.

17
18
19 Ms. Duvall is not alone in recognizing the special nature of Balboa
20 Park. The City itself has declared its intention to protect Balboa Park
21 and other traditional public forums within the City for the pursuit of
22 First Amendment-protected activities. In San Diego Municipal Code
23 Section 63.0501, the City declares that it “is committed to protecting
24 and preserving the rights of persons engaged in expressive activity on
25

26
27 ³ Public parks, like Balboa Park, are “quintessential traditional public
28 forums.” *ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1099 (9th
Cir. 2003).

1 public property, as protected by the First Amendment to the United
2 States Constitution and by the California Constitution. City *parks*,
3 *plazas*, and *sidewalks* have served as a traditional forum for
4 performances, visual artists, and other *expressive activity*.” *Id.*
5 (emphasis in original).

6
7 Public forums like Balboa Park have long been recognized by the
8 courts as special locations for First Amendment activity that serve a
9 vital role. Such public forums “have immemorially been held in trust for
10 the use of the public and, time out of mind, have been used for purposes
11 of assembly, communicating thoughts between citizens, and discussing
12 public questions.” *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515
13 (1939) (“Such use of the streets and public places has, from ancient
14 times, been a part of the privileges, immunities, rights, and liberties of
15 citizens.”).

16
17 **B. Ms. Duvall is an artist who uses her art to speak about
18 her political beliefs and express herself.**

19 All of Ms. Duvall’s artwork is original, designed and made by
20 herself. *See* Dec. at ¶¶ 59 & 61. She studied art at the college level here
21 in California. *See* Dec. at ¶ 6. She has also studied art internationally.
22 *See* Dec. at ¶ 8 & Complaint, ECF 1 at ¶ 42. Ms. Duvall has had her art
23 shown in a gallery and has won prizes for her artwork as well. *See* Dec.
24 at ¶¶ 9-11 & Complaint, ECF 1 at ¶¶ 43-44. Some of the artwork she
25 shares is pure speech (i.e., containing writing expressing her political
26 beliefs). *See* Dec. at ¶¶ 37-47 & Exhibit E. Some artwork is pure
27 expressive speech (i.e., representations of thoughts/feelings/experiences
28 or views on color, form, and design). *See* Dec. at ¶¶ 48-58, Exhibit F, &

1 Complaint, ECF at ¶¶ 45. But *all of it* is a reflection and *expression* of
2 her beliefs, experiences, and perspectives.

3 Ms. Duvall is part of a community of artists within San Diego who
4 gather to share their artwork. *See* Dec. at ¶¶ 12 & 14. When sharing her
5 art in public, she engages in conversations with members of the public
6 about her art and about art more generally. *See* Dec. at ¶¶ 25-35. This
7 is something she had done (before being cited and fined) for years. *See*
8 Dec. at ¶ 36.

9
10 Ms. Duvall makes political art because she believes “it is
11 important to stand up for your beliefs.” *See* Dec. at ¶ 38. She uses her
12 art to “be a good citizen and to try and change things for the better.” *See*
13 Dec. at ¶ 39. Ms. Duvall feels that there is “a lot of injustice and
14 unfairness in the world” and she wants “people to know what” she
15 thinks as well as to “express solidarity with oppressed communities.”
16 *See* Dec. at ¶¶ 40-42. She believes that public expressions “of solidarity
17 are also important because it helps marginalized people know they are
18 not alone.” *See* Dec. at ¶ 45. Ms. Duvall believes that when people
19 purchase her LGBTQ+ art, for example, and display it in their homes,
20 offices, or in public (on a pin or necklace), it “signal[s] to other queer
21 people that you’re a safe person and they’re not alone.” *See* Dec. at ¶ 46.

22
23 Ms. Duvall also makes art to explore her experience with
24 synesthesia (a neurological condition). *See* Dec. at ¶ 48. Many of her
25 works of art depict the human form cleft in two, representing her own
26 experience with synesthesia. *See* Dec. at ¶ 49. Through her artwork
27 depicting her own experience with synesthesia, she also hopes to spark
28

1 dialogue and connections with others who might also have this
2 condition. *See Dec. at ¶ 50.*

3 Ms. Duvall does artwork in miniature out of concern for the
4 environment and to raise awareness about the impact of humans on the
5 world around us. *See Dec. at ¶¶ 51-57.* Firing large clay pieces uses a lot
6 of energy; thus her miniature pieces are an attempt to respect the
7 environment and an attempt to communicate those values. *See Dec. at*
8 *¶ 53.* This environmentally sensitive approach to her art is part of what
9 motivates her work in mixed media: she is “anti-consumer, anti-waste,
10 pro-recycle, pro-environment, pro-upcycle, pro-awareness of how
11 humans are trashing our home environment/Earth.” *See Dec. at ¶ 64.*
12 She also finds “broken or outdated things, scrap, trash, and
13 incorporate[s] them into [her] art to make a statement about our impact
14 on the world around us and how care for existing matter can be new and
15 beautiful.” *See Dec. at ¶ 66.*

16 Although she has tried many of the forms of art that the City of
17 San Diego considers acceptable mediums for art (such as drawing,
18 photography, and watercolor), she always returns to clay. *See Dec. at ¶¶*
19 *67-68.* She feels compelled to work in clay, due to its “earthiness” and
20 the “touch,” “feeling,” and physicality it provides. *See Dec. at ¶¶ 69-70.*

21 **C. San Diego’s “Sidewalk Vending Regulations” are for**
22 **“sidewalk vendors” not those who, like Ms. Duvall, are**
23 **engaging in political speech or pure expressive**
24 **activities.**

25 Since 2024, “visual artists” and others engaged in “expressive
26 activity” in the City of San Diego are subject to regulation under the
27
28

1 “Expressive Activity” code. *See* San Diego Municipal Code § 63.0501, *et*
2 *seq.* and § 36.0113(a) (explaining the “Sidewalk Vending Regulations”
3 do not apply to “any person engaged in *expressive activity* . . .”). This
4 code creates certain place and manner restrictions relative to where the
5 “visual artist” can show and sell their art within San Diego’s public
6 forums. *See, e.g.*, San Diego Municipal Code §§ 63.0503, 63.0504.

7
8 In contrast, “sidewalk vendors” are subject to regulation under the
9 “Sidewalk Vending Regulations” amended in 2024. *See* San Diego
10 Municipal Code § 36.0101, *et seq.*

11 “Sidewalk vendors” are subject to regulatory burdens that do not
12 apply to “visual artists,” including:

- 13 • The obligation to obtain permits prior to selling their food
14 or merchandise (San Diego Municipal Code § 36.0103(b));
- 15 • Complete exclusion from certain premier San Diego
16 locations during extended periods of the year (see, e.g., San
17 Diego Municipal Code §§ 36.0102, 36.0107(i)) – including
18 Balboa Park from Memorial Day to Labor Day);
- 19 • Required compliance with a host of other restrictions as to
20 the time, place, and manner of their activities (see, e.g.,
21 San Diego Municipal Code §§ 36.0105(b), (c), 36.0106,
22 36.0107, 36.0108(b)).

23 **D. The City of San Diego has incorrectly deemed**
24 **Ms. Duvall’s artwork to be a nonexpressive**
25 **“handcraft” unworthy of First Amendment**
26 **protections.**

27 After the revisions to the “Sidewalk Vending Regulations” and the
28 creation of the “Expressive Activity” code in 2024, Defendant City of San
Diego started citing and fining Ms. Duvall for showing her artwork in

1 Balboa Park. Ms. Duvall was first cited and fined \$250 for allegedly
2 violating various provisions of the “Sidewalk Vending Regulations” on
3 August 2, 2024. *See* Dec. at ¶¶ 71-75; Exhibits G & H. She appealed this
4 citation. *See* Dec. at ¶ 73. Following this citation and fine, Ms. Duvall
5 refrained from returning to Balboa Park with her art out of fear of being
6 cited and fined again. *See* Dec. at ¶ 75. She wanted to have her appeal
7 resolved so it was clear to her and the City what her rights were. *See*
8 Dec. at ¶¶ 76-77. But after waiting over nine months with no further
9 communication from the City about her appeal, she summoned the
10 courage to return to Balboa Park with her art. *See* Dec. at ¶¶ 79-80. On
11 May 9, 2025, Ms. Duvall was again fined by San Diego Park Rangers for
12 supposedly violating the “Sidewalk Vending Regulations” with her
13 artwork. *See* Dec. at ¶¶ 81-82; Exhibits I & J. She appealed this citation
14 as well. Unfortunately, Ms. Duvall lost both appeals. *See* Dec. at ¶ 83.

15
16 The City has taken the position that Ms. Duvall is not a “visual
17 artist” sharing and selling her “visual art” at all. Instead, Defendant
18 City of San Diego considers Ms. Duvall to be a “street vendor” selling
19 “handcrafts.” Other artists—including painters, caricature artists,
20 henna artists, and face painters⁴—can sell their art in Balboa Park
21 subject only to the restrictions of the “Expressive Activity” code
22 described *supra*. But Ms. Duvall, whose art has been deemed a
23 nonexpressive “handcraft,” is compelled to comply with the more
24 onerous and restrictive “Sidewalk Vending Regulations.”
25
26

27
28

⁴ *See* San Diego Municipal Code § 63.0502.

1 Ms. Duvall is not the only “visual artist” who, under the City’s
2 2024 definition of “handcrafts,” would find herself no longer protected
3 by the First Amendment in the City’s eyes. San Diego’s code defines any
4 “object” that is “carv[ed]” or “weld[ed]” as a “handcraft.” *See* San Diego
5 Municipal Code § 63.0502 (“*Handcrafts* means objects made either by
6 hand or with the help of devices used to shape or produce the objects
7 through such methods as . . . carving . . . welding . . . metal work”) *(*
8 *emphasis in original)*. Thus, “objects” which have been “carv[ed]” by
9 hand, such as Michelangelo’s *Pieta* carved in marble, or those which
10 have been “weld[ed]” such as Beverly Stoll Pepper’s *Excalibur* outside
11 the Edward J. Schwartz Federal Building are de facto nonexpressive
12 “handcrafts” under the City of San Diego’s current definition.
13

14 While San Diego Municipal Code § 63.0502’s “handcrafts”
15 definition declares that “*Handcrafts* are objects not likely to
16 communicate a message, idea, or concept to others, are often mass-
17 produced or produced with limited variation, and often have functional
18 utility apart from any communicative value they might have,” these
19 vague descriptors: (1) “*not likely* to communicate a message,” (2) “*often*
20 mass-produced,” and (3) “*often* have a functional utility apart” are not
21 being used to shield First Amendment-protected expressive speech from
22 enforcement actions. As Ms. Duvall’s multiple citations show, the fact
23 that her artwork includes objects made by hand with clay and metal
24 resulted in them being deemed “handcrafts” even though *none* of her
25 work is “mass-produced,” *all* of her work “communicate[s] a message,”
26 and the vast majority of her artwork has no “functional utility”
27
28

1 whatsoever.⁵ The City of San Diego is relying on its Park Rangers to
2 identify “handcrafts” but has not instructed or trained them that objects
3 which “communicate a message, idea, or concept to others” or have
4 “communicative value” but only nominal functional utility are protected
5 by the First Amendment.

6 **IV. ARGUMENT.**

7
8 Before this Court may grant a preliminary injunction, Ms. Duvall
9 must show that:

- 10 1. she “is likely to succeed on the merits”;
- 11 2. “that [s]he is likely to suffer irreparable harm in the absence of
12 preliminary relief”;
- 13 3. “that the balance of equities tips in h[er] favor”; and
- 14 4. “that an injunction is in the public interest.”

15 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

16
17 In the First Amendment context, Ms. Duvall “bears the initial
18 burden of making a colorable claim that [her] First Amendment rights
19 have been infringed, or are threatened with infringement, at which
20 point the burden shifts to the government to justify the restriction.”

21 *Sanders Cnty. Republican Cent. Comm. v. Bullock*, 698 F.3d 741, 744
22 (9th Cir. 2012) (internal quotation and citation omitted).

23
24
25
26 ⁵ The only art of Ms. Duvall’s that arguably has nominal “functional
27 utility” are her miniature vases, which could possibly hold very tiny
28 flowers or other miniature items. Ms. Duvall creates these miniatures
vases, however, as decorative pieces, and does so to convey an specific
environmental message.

1 **A. Ms. Duvall is an artist who uses her artwork to engage**
2 **in political speech as well as pure expressive**
3 **activities.**

4 To determine whether Ms. Duvall “is likely to succeed on the
5 merits” of her claims, this Court must determine if she has a “colorable
6 claim” that her First Amendment rights have been infringed. The art
7 Ms. Duvall has been penalized for sharing in Balboa Park is comprised
8 of: (1) political speech and (2) pure expressive speech and is thus entitled
9 to full First Amendment protections. Defendant City of San Diego’s
10 determination that her art is non-expressive “handcrafts” is incorrect.

11 **1. Ms. Duvall’s political art is protected *speech* and**
12 **thus Defendant City of San Diego’s “Sidewalk**
13 **Vending Regulations” do not apply.**

14 Some of Ms. Duvall’s political art includes *writing* (e.g., “Say Gay,”
15 “Ban Guns, Not Books”) that is applied to pins or necklaces. *See* Exhibit
16 E. Because her political speech is affixed to a pin or necklace, the City
17 of San Diego considers it to be a “handcraft” subject to the “Sidewalk
18 Vending Regulations” instead of the “Expressive Activity” code. *See* San
19 Diego Municipal Code § 63.0502 (“*Handcrafts* means objects made
20 either by hand . . .including necklaces . . . and other jewelry used or
21 intended for personal adornment. . . .”). Even though San Diego’s
22 Municipal code declares that “[h]andcrafts are objects *not likely to*
23 *communicate a message, idea, or concept to others*, are often mass-
24 produced or produced with limited variation, and often have functional
25 utility apart from any communicative value they might have,” (*id.*)
26 Ms. Duvall’s art expressing her political opinions is not considered by
27 the City to be speech but instead a “handcraft” subject to regulation
28

1 under the “Sidewalk Vending Regulations.” But affixing political speech
2 to a pin or a necklace does not strip it of its First Amendment
3 protections.⁶ See *ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1107
4 (9th Cir. 2003) (“Our cases show that the sale of merchandise which
5 carries or constitutes a political, religious, philosophical or ideological
6 message falls under the protection of the First Amendment.”) (internal
7 quotation marks and citations omitted). Nor does offering political art
8 for sale lessen its constitutional protections. See *Gaudiya Vaishnava*
9 *Soc’y v. San Francisco*, 952 F.2d 1059, 1063 (9th Cir. 1991) (“an
10 expressive item does not lose its constitutional protections because it is
11 sold rather than given away”) (citations omitted); see also *Perry v. L.A.*
12 *Police Dep’t*, 121 F.3d 1365, 1371 (9th Cir. 1997) (expanding the holding
13 in *Guadiya* to speakers who are not nonprofit organizations).
14

15 The U.S. Supreme Court and Ninth Circuit have long recognized
16 a wide range of manners and modes of expression as pure speech and/or
17 expression protected by the First Amendment. In *Cohen v. California*,
18 the U.S. Supreme Court overturned Cohen’s misdemeanor conviction for
19 disturbing the peace when he wore a jacket with the words “Fuck the
20

21
22
23 ⁶ Curiously, if Ms. Duvall made political “buttons” instead of political
24 pins, she would be protected under San Diego’s current code instead of
25 penalized. See San Diego Municipal Code § 63.0502 (“Items that are
26 inherently communicative in nature include . . . buttons . . .”). The
27 municipal code does not require the “buttons” to have any speech or
28 iconography on them, so a “button” of a balloon would be protected
“expressive activity” as a “form of speech” but Ms. Duvall’s actual speech
of “Say Gay” or “Ban Guns, Not Books” on a pin or necklace are
prohibited “handcrafts.”

1 Draft” into a courthouse where women and children were present. 403
2 U.S. 15, 16 (1971). Even though the Court was dealing with a jacket (a
3 functional item) bearing writing in *Cohen*, the Court had little difficulty
4 in finding Cohen to be engaging in (and punished for) “speech.” *Id.* at
5 18. In *Joseph Burstyn v. Wilson*, the Court reviewed whether motion
6 pictures were protected by the First Amendment. 343 U.S. 495 (1952).
7 In noting their ability to “affect public attitudes and behavior in a
8 variety of ways, ranging from direct espousal of a political or social
9 doctrine to *the subtle shaping of thought which characterizes all artistic*
10 *expression*” the Court found motion pictures to be expressive (even if
11 created solely for entertainment, even if pursued for profit). *Id.* at 501
12 (emphasis added).
13

14 In *Anderson v. City of Hermosa Beach*, the Ninth Circuit examined
15 whether tattoos, the process of tattooing, and businesses engaged in
16 tattooing were engaging in expressive conduct or pure expressive
17 speech. The Court ultimately held that the “tattoo *itself*, the *process* of
18 tattooing, and even the *business* of tattooing are not expressive conduct
19 but purely expressive activity fully protected by the First Amendment.”
20 621 F.3d 1051, 1060 (9th Cir. 2010) (emphasis in original). In *Anderson*,
21 the Court pointed out that “a form of speech does not lose First
22 Amendment protection based on the kind of surface it is applied to.” *Id.*
23 at 1061. When Ms. Duvall is saying “Say Gay” or “Ban Guns Not Books”
24 on her art, her speech does not lose its expressive value or First
25 Amendment protection simply because it is applied to a pin or a
26
27
28

1 necklace. She is directly “speaking” her political values to others
2 *through her art.*

3 **2. Ms. Duvall’s expressive artwork—even if it lacks**
4 **a clear discernable message—is still a protected,**
5 **purely expressive activity and qualifies as**
6 **“visual art” worthy of First Amendment**
7 **protections.**

8 Ms. Duvall’s original artwork that lacks political writing is
9 nevertheless protected by the First Amendment also. The U.S. Supreme
10 Court has explained that “the Constitution looks beyond written or
11 spoken words as mediums of expression.” *Hurley v. Irish-American Gay*,
12 515 U.S. 557, 569 (1995). The Court has emphasized that “a narrow,
13 succinctly articulable message is not a condition of constitutional
14 protection.” *Id.* To hold otherwise would create a world where First
15 Amendment protections “never reach the unquestionably shielded
16 painting of Jackson Pollock, music of Arnold Schoenberg, or
17 Jabberwocky verse of Lewis Carroll.” *Id.*

18 In *White v. City of Sparks*, the Ninth Circuit examined visual art
19 and whether the First Amendment protects “self-expression through
20 painting.” 500 F.3d 953, 956 (9th Cir. 2007). In finding that it did, the
21 Court noted that in the context of painting, “an artist conveys his sense
22 of form, topic, and perspective” which may contain a clear message or
23 instead “may express the artist's vision of movement and color.” *Id.* The
24 Court went on to explain that “[s]o long as it is an artist's self-
25 expression, a painting will be protected under the First Amendment,
26 because it expresses the artist's perspective.” *Id.* Ms. Duvall expressing
27 herself through clay and mixed media rather than the canvas used by
28

1 Mr. White makes her art no less expressive. Ms. Duvall’s art in
2 miniature is a statement of the artist’s impact on the world around her.
3 See Dec. at ¶¶ 51-54. Ms. Duvall’s mixed media art is an attempt to
4 express her “anti-consumer, anti-waste, pro-recycle, pro-environment,
5 pro-upcycle, pro-awareness of how humans are trashing our home
6 environment/Earth” views. See Dec. ¶ 64. Ms. Duvall incorporates
7 outdated items into her works “to make a statement about our impact
8 on the world around us and how care for existing matter can be new and
9 beautiful.” See Dec. at ¶ 66. Her works including the human form broken
10 in two explore her experience with synesthesia. See Dec. at ¶¶ 48-50.
11 Her pure expressive art—even though not created on a painter’s
12 canvas—is her sense of the world as she experiences it. That is what art
13 is.
14

15 **3. Because Ms. Duvall’s art is *not* mass-produced,**
16 **communicates “message[s], idea[s], or concept[s]**
17 **to others,” and has at most nominal “functional**
18 **utility apart from any communicative value,” it**
19 **is not a “handcraft” as defined in San Diego’s**
20 **Municipal Code Section 63.0502 and thus not**
21 **properly subject to the “Sidewalk Vending**
22 **Regulations.”**

23 Ms. Duvall’s art is not properly considered a “handcraft” as defined
24 by the City of San Diego nor appropriately subjected to the “Sidewalk
25 Vending Regulations.” Under its own terms, Section 63.0502 defines
26 “handcrafts” as “not likely to communicate a message, idea, or concept
27 to others, are often mass-produced or produced with limited variation,
28 and often have functional utility apart from any communicative value
they might have.” See Exhibit B. As discussed *supra* and in her

1 Declaration, Ms. Duvall intends for her political and pure expressive art
2 to “communicate a message, idea, or concept to others,” none of it is
3 “mass-produced,” and *at most* her art has nominal functional utility
4 apart from the “communicative value” it has. *See* Sections III(B) & Dec.
5 at ¶¶ 37-70. None of her art properly falls within the City’s definition of
6 “handcraft.”
7

8 **4. The City of San Diego’s attempt to ban artists**
9 **from using entire modes of communication is**
10 **unconstitutional.**

11 If the City of San Diego’s Section 63.0502 definition of
12 “Handcrafts” properly applies to Ms. Duvall’s political and expressive
13 artwork, the City—by municipal fiat—has removed several traditional
14 modes of communication typically available to artists. Section 63.0502
15 declares welded objects, carved objects, and those made from metalwork
16 to be non-expressive. Such an expansive exclusion of media traditionally
17 used by artists for expression is unprecedented and unconstitutional.

18 The use of welding to form sculpture is a traditional means of
19 artistic expression. For example, the Smithsonian American Art
20 Museum features welded works of art, such as Davis Smith’s 1935
21 *Reclining Figure*, [https://americanart.si.edu/artwork/reclining-figure-](https://americanart.si.edu/artwork/reclining-figure-86061)
22 [86061](https://americanart.si.edu/artwork/reclining-figure-86061). The use of carving is also regularly used by artists to create three
23 dimensional visual art. San Diego’s own Timken Museum of Art
24 features carved art such as Thomas Ball’s 1874 *Eve*,
25 <https://www.timkenmuseum.org/collection/bust-of-eve/>. The use of
26 miniature vases as decorative art has been around for millennia. New
27 York City’s Metropolitan Museum of Art features miniature decorative
28

1 vases like the 8th century BCE Cypriot terracotta miniature amphora,
2 <https://www.metmuseum.org/art/collection/search/330047>. Artists have
3 sought to express themselves through welded works, carved works, and
4 works made from clay/pottery as expressive art for thousands of years.
5 The functional prohibition of these expressive mediums for local artists
6 results in entire modes of expression being excised from the First
7 Amendment, and it serves no compelling or significant government
8 interest.
9

10 While there is no analogous U.S. Supreme Court case precisely on
11 point, the Court has been skeptical of municipal schemes that seek to
12 shut down entire modes of communication. In *City of Ladue v. Gilleo*,
13 the Supreme Court analyzed a municipality’s ordinance prohibiting the
14 display of most signs on residential properties. 512 U.S. 43 (1994). In
15 reviewing the constitutionality of the ordinance at issue, the Court
16 noted that residential signs “have long been an important and distinct
17 medium of expression.” *Id.* at 55. The Court explained that its “prior
18 decisions have voiced particular concern with laws that foreclose an
19 entire medium of expression.” While such “prohibitions foreclosing
20 entire media may be completely free of content or viewpoint
21 discrimination, the danger they pose to the freedom of speech is readily
22 apparent -- by eliminating a common means of speaking, such measures
23 can suppress too much speech.” *Id.* Here, the City of San Diego has
24 completely foreclosed at least three avenues for expression traditionally
25 used by artists: carving, welding, and visual art made using clay/pottery
26 or “metal work”. Doing so violates the First Amendment.
27
28

1 **B. Plaintiff is suffering and will continue to suffer**
2 **irreparable harm in the absence of preliminary relief:**
3 **Ms. Duvall’s political speech and pure expressive**
4 **activities have been, are, and will continue to be**
5 **chilled because of the enforcement of the “Sidewalk**
6 **Vending Regulations” against her.**

7 Ms. Duvall has already been harmed for exercising her First
8 Amendment freedoms. The citations, fines, and threats of impoundment
9 of her art constitute cognizable harm and continue to chill her freedom
10 of speech. Ms. Duvall worries that if her art is impounded it could be
11 damaged or destroyed. *See* Dec. at ¶ 86. While she wants to return to
12 Balboa Park and other public spaces within the City of San Diego, she
13 does not out of fear of more citations, fines, and possible impoundment
14 of her artwork. *See* Dec. at ¶¶ 88-91.

15 Because Defendant City of San Diego will likely continue to
16 penalize Ms. Duvall when she shares her political speech and expressive
17 art within the City’s public forums, she continues to refrain from
18 speaking and expressing herself when she would otherwise speak and
19 express herself. *See* Dec. at ¶¶ 87-93. The U.S. Supreme Court has noted
20 that “loss of First Amendment freedoms, for even minimal periods of
21 time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*,
22 427 U.S. 347, 373 (1976) (citation omitted). *See also Warsoldier v.*
23 *Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005) (“under the law of this
24 circuit, a party seeking preliminary injunctive relief in a First
25 Amendment context can establish irreparable injury sufficient to merit
26 the grant of relief by demonstrating the existence of a colorable First
27 Amendment claim.”)

1 Amendment claim”) (internal quotations and citations omitted).
2 Ms. Duvall meets that standard here.

3 **C. The balance of equities tips in Plaintiff’s favor: As a**
4 **“visual artist,” Ms. Duvall would still need to comply**
5 **with Defendant’s “Expressive Activity” Ordinance.**

6 The balance of equities tips in Plaintiff’s favor. Ms. Duvall is an
7 artist expressing her political beliefs, personal experiences, and
8 perspectives on the world around her through her art. *See* Dec. at ¶¶ 37-
9 70. She has refrained from returning to the public forums within the
10 City of San Diego to share her art out of fear that she will not be treated
11 as her fellow “visual artists” are treated, but that instead she will be
12 penalized as an unauthorized “street vendor.” *See* Dec. at ¶¶ 87-92. Each
13 moment that Ms. Duvall’s political speech and expressive activities are
14 chilled by the “Street Vending Regulations” is a cognizable harm.

15
16 There are already regulations in place governing the display and
17 sale of “visual art” in the City of San Diego’s public forums. *See* San
18 Diego Municipal Code § 63.0501, *et seq.* Ms. Duvall would, of course,
19 have to comply with those regulations. Thus, the City of San Diego will
20 not be harmed in any way by enforcing the same laws it enforces against
21 other “visual artists” against Ms. Duvall instead of the laws it enforces
22 against “sidewalk vendors.” Where “serious” First Amendment
23 questions are raised, the Ninth Circuit has found the balance of equities
24 to tip in the favor of the litigant seeking to protect their First
25 Amendment rights. *See Am. Bev. Ass’n v. City & Cnty. of S.F.*, 871 F.3d
26 884, 898 (9th Cir. 2017). Here, the balance of equities tips in
27 Ms. Duvall’s favor.
28

1 **D. An injunction, which would allow Ms. Duvall to return**
2 **to public spaces within the City of San Diego to share**
3 **her artwork subject to the “Expressive Activity”**
4 **ordinance and not the “Sidewalk Vending**
5 **Regulation,” is in the public interest.**

6 Here, the issuance of the requested injunction (prohibiting the
7 City of San Diego from enforcing the “Sidewalk Vending Regulations”
8 against Ms. Duvall) is in the public interest. The Ninth Circuit has
9 “consistently recognized the significant public interest in upholding
10 First Amendment principles.” *Cal. Chamber of Commerce v. Council for*
11 *Educ. & Rsch. on Toxics*, 29 F.4th 468, 482 (9th Cir. 2022). *See also Doe*
12 *v. Harris*, 772 F.3d 563, 583 (9th Cir. 2014) (“the public interest favors
13 the exercise of First Amendment rights”). When Ms. Duvall is allowed
14 to share her art in Balboa Park, she contributes to the dynamic and
15 lively atmosphere of this treasured locale. She is able to advocate her
16 political views and share her own unique perspective on the world
17 through her art. This adds to the vitality of San Diego’s public spaces
18 and is in the public’s interest.

19 **E. The Court should require no bond for the injunction**
20 **to issue.**

21 Given the lack of damages that Defendant City of San Diego would
22 suffer from the injunction, Plaintiff respectfully requests that this Court
23 order no bond be filed or that the bond amount be set at zero. *See Conn.*
24 *Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th
25 Cir. 2003) (“The district court is afforded wide discretion in setting the
26 amount of the bond . . . and the bond amount may be zero if there is no
27

evidence the party will suffer damages from the injunction.”) (citations omitted).

V. CONCLUSION.

For all of the foregoing reasons, Ms. Duvall respectfully requests that this Court grant her request for a preliminary injunction enjoining the City of San Diego and its officers, agents, servants, employees, and attorneys from instituting any enforcement actions against Sara Duvall for failing to comply with the provisions of San Diego Municipal Code § 36.0101, *et seq.* (e.g., “Sidewalk Vending Regulations”) when showing and selling her original artwork in San Diego’s public forums.

Respectfully submitted,

DATED: April 15, 2026

s/Michele Akemi McKenzie

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Sara Duvall v. City of San Diego
 Case No.: 26-cv-1112-AGS-BJW

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EXHIBIT A

#64
02/27/2024

(O-2024-73)
(COR. COPY 2)

ORDINANCE NUMBER O- 21775 (NEW SERIES)

DATE OF FINAL PASSAGE FEB 28 2024

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 6, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING AND AMENDING SECTION 36.0101, AMENDING SECTIONS 36.0102 AND 36.0105, RETITLING AND AMENDING SECTION 36.0107, AMENDING SECTIONS 36.0108, 36.0110, 36.0111, AND 36.0113, AND RETITLING AND AMENDING SECTION 36.0114; AMENDING CHAPTER 5, ARTICLE 4, DIVISION 1 BY AMENDING SECTIONS 54.0105 AND 54.0122; AMENDING CHAPTER 5, ARTICLE 7, DIVISION 00 BY REPEALING SECTIONS 57.10 AND 57.10.1; AMENDING CHAPTER 6, ARTICLE 3, DIVISION 00 BY RETITLING AND AMENDING SECTION 63.20.20; AMENDING CHAPTER 6, ARTICLE 3, DIVISION 1 BY AMENDING SECTION 63.0102; AND AMENDING CHAPTER 6, ARTICLE 3 BY ADDING NEW DIVISION 5 AND NEW SECTIONS 63.0501, 63.0502, 63.0503, 63.0504, 63.0505, AND 63.0506, ALL RELATING TO SIDEWALK VENDING, COMMERCIAL ACTIVITY, AND EXPRESSIVE ACTIVITIES ON PUBLIC PROPERTY.

WHEREAS, California Government Code sections 51036 through 51039, which decriminalized sidewalk vending and limited cities and counties ability to regulate sidewalk vendors to requirements in the state law or otherwise directly related to objective health, safety, or welfare concerns, became effective on January 1, 2019; and

WHEREAS, in response to these state law amendments, the Council of the City of San Diego (Council) adopted Sidewalk Vending Regulations in San Diego Ordinance O-21459 (May 23, 2022) amending Chapter 3, Article 6, Division 1 of the San Diego Municipal Code to address objective health, safety, and welfare concerns and regulations in parks and beaches, to ensure the public's use and enjoyment of natural resources and recreational opportunities, and to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of these parks and beaches; and

WHEREAS, the City has observed a need for impounding procedures and increased enforcement measures to address vendors who disregard the Sidewalk Vending Regulations and operate in a manner that disrupts public safety, obstructs sidewalk access, or creates unsanitary conditions; and

WHEREAS, including a process for immediate impound of vendor equipment provides an enforcement tool to address vendors who refuse to comply with the Sidewalk Vending Regulations to the detriment of public health, safety, and welfare; and

WHEREAS, the City's parks, plazas, and sidewalks have served as a traditional forum for performances, visual artists, and other expressive activity; and

WHEREAS, unregulated expressive activity has led to challenges for first responders to access emergency situations, has intensified competing interests in available space and increased the incidents of physical altercations among sidewalk vendors and persons engaged in expressive activity, and has limited the accessibility of common walkways and the safe flow of pedestrian and vehicular traffic in some areas; and

WHEREAS, certain parks, plazas, and high-traffic areas constitute major tourist attractions, hosting significant numbers of people annually and containing limited geographic space where visitors, tourists, sidewalk vendors, and people engaged in expressive activity compete for space; and

WHEREAS, the City seeks to adopt regulations that protect rights guaranteed by the First Amendment to the United States Constitution and the California Constitution, while balancing the City's interests in public safety, order, and accessibility of sidewalks, parks, and beaches; and

(O-2024-73)
(COR. COPY 2)

WHEREAS, the Council finds that authorizing the City Manager to designate areas for expressive activities using equipment or furniture will reduce tensions associated with competing for limited space, will ensure people engaged in expressive activity have designated areas to engage their intended audiences without having to compete with commercial vendors, and will reduce the incidents of physical altercations, and designating expressive activity areas in areas where the proliferation of commercial activity potentially interferes with the historic and cultural opportunities and preservation activities will protect and preserve the nature of these areas for everyone; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

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

Section 1. That Chapter 3, Article 6, Division 1 of the San Diego Municipal Code is amended by retitling and amending section 36.0101, amending sections 36.0102 and 36.0105, retitling and amending section 36.0107, amending sections 36.0108, 36.0110, 36.0111, and 36.0113, and retitling and amending section 36.0114, to read as follows:

§36.0101 Title and Purpose

- (a) Title. This Division shall be known as the Sidewalk Vending Regulations.
- (b) Purpose and Intent. It is the purpose and intent of this Division to provide for the regulation of sidewalk vendors on public property pursuant to California Government Code sections 51036 through 51039. The Council finds and declares that these regulations are directly related to objective health, safety, and welfare concerns created by competing uses of

sidewalks by residents, visitors, and sidewalk vendors. The Council further finds and declares that regulations on sidewalk vending in City parks and beach areas are necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities and are necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the parks and beach areas.

§36.0102 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply:

Above-ground structure through *Ballpark District* [No change in text.]

Beach area has the same meaning as in section 63.20 of this Code.

Best management practices through *Encroachment Permit* [No change in text.]

Expressive Activity has the same meaning as in section 63.0502 of this Code.

Gaslamp Quarter District through *Major transit stop* [No change in text.]

Park has the same meaning as in section 63.0102(b) of this Code.

Permittee through *Portable cooking equipment* [No change in text.]

Public right-of-way through *School* [No change in text.]

Services are activities involving the performance of work for others or the provision of intangible items directly to a person or to a group of people at the same time that cannot be returned once they are provided. Examples include hair styling, massage, yoga, exercise classes, and dog training.

Sidewalk [No change in text.]

(O-2024-73)
(COR. COPY 2)

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

Stationary sidewalk vendor through *Summer moratorium* [No change in text.]

Vend or *vending* means with respect to any *goods* or *services*, to sell, offer to sell, expose or display for sale, solicit offers to purchase, barter, or require someone to negotiate, establish, or pay a fee before providing *goods* or *services*, even if characterized as a donation, on a public street, alley, highway, parking lot, *sidewalk*, or *public right-of-way*.

Vending equipment means any *conveyance*, table, stand, display, showcase, rack, or any other free-standing equipment used for *vending* on the *sidewalk*.

Vending permit [No change in text.]

§36.0105 Sidewalk Vending Generally

(a) through (g) [No change in text.]

(h) Sidewalk vendors engaged in the vending of food or beverages shall display a valid San Diego County Environmental Health Permit and have hand sanitizer located in a conspicuous location readily available for use by customers.

(i) [No change in text.]

(j) No *vendor* shall *vend* to any person traveling in a motor vehicle along a public roadway. *Vending* in or from a parked vehicle is addressed in section 54.0122.

(k) through (l) [No change in text.]

- (m) To maintain accessibility standards, *sidewalk vendors* shall not place or allow any obstruction to be placed on the *sidewalk* that would reduce the width of the *sidewalk* to less than 48 inches excluding the curb, except for the brief duration of time for a *roaming sidewalk vendor* to conduct a sale. Notwithstanding the foregoing, *sidewalk vendors* shall immediately move to provide access to the *sidewalk* to avoid impeding the flow of pedestrian or other traffic.
- (n) [No change in text.]
- (o) *Sidewalk vendors* shall not engage in or offer to engage in any type of rental activity, including the rental of any *goods* or *services*.
- (p) through (u) [No change in text.]

§36.0107 Vending in Parks, Plazas, and Beach Areas

The following provisions apply in *parks, plazas, and beach areas*. Where the following provisions are more restrictive than those set forth in section 36.0106, *sidewalk vendors* shall comply with the more restrictive provisions:

- (a) *Sidewalk vendors* shall stop *vending* before the designated closing time of the *park, plaza, or beach area*.
- (b) *Vending* is permitted between 8:00 a.m. and sunset in *parks, plazas, and beach areas* where there is no designated closing time.
- (c) [No change in text.]
- (d) *Sidewalk vendors* shall not *vend* within 25 feet of any decorative fountain, statue, monument, memorial, or art installation.

(O-2024-73)
(COR. COPY 2)

- (e) Subject to applicable law, the City Manager is authorized to enact rules and regulations to prohibit *vending* in any space that would obstruct, damage or otherwise adversely affect the public's use and enjoyment of natural resources and recreation opportunities or contribute to an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of a *park*.
- (f) *Stationary sidewalk vendors* are not permitted within any area of a *park* or *plaza* if the *park* or *plaza* operator has signed an agreement for concessions that exclusively permits the sale of *goods* or *services* by a specified concessionaire, provided that notice by signage or other means is provided to the *stationary sidewalk vendor*.
- (g) [No change in text.]
- (h) Consistent with applicable law, the City Manager has the authority to reasonably limit the number of *sidewalk vendors* in certain *parks* by requiring *sidewalk vendors* to obtain an additional park sales permit to *vend* in the following locations: Balboa Park, Mission Bay Park, Ocean Beach Park, Mission Beach Park, Kellogg Park, Ocean Boulevard Park, Ellen Browning Scripps Park, South Mission Beach Park, and Torrey Pines City Park.
- (i) *Vending* is prohibited during the *summer moratorium* in Balboa Park, Mission Bay Park, and the Shoreline Parks, which are those *parks* contiguous to the shoreline or beach in the communities of Ocean Beach, Mission Beach, Pacific Beach, and La Jolla.
- (j) through (k) [No change in text.]

§36.0108 Sidewalk Vending Equipment and Goods

- (a) [No change in text.]
- (b) *Sidewalk vendors* shall not:
 - (1) through (4) [No change in text.]
 - (5) set up customer seating areas.
 - (i) *Sidewalk vendors* may only have a chair for personal use.
 - (ii) *Sidewalk vendors* that do not serve food or beverages may use tables only for *vending* purposes, such as conducting transactions or displaying *goods* for sale.
 - (iii) *Sidewalk vendors* that serve food or beverages must conduct all *vending* from a permitted *conveyance* in accordance with their health permit from the County Department of Environmental Health and Quality.
- (c) through (f) [No change in text.]

§36.0110 Penalties and Fines

- (a) Any violation of this Division by a *sidewalk vendor* holding a valid *vending permit* shall be subject to the following:
 - (1) an administrative citation and \$100 penalty for a first violation.
 - (2) through (3) [No change in text.]
- (b) Any *sidewalk vendor* found *vending* without a *vending permit*, if required pursuant to this Division, shall immediately cease *vending* and be subject to the following:
 - (1) an administrative fine of \$250 for a first violation.

(2) through (3) [No change in text.]

(c) If a *sidewalk vendor* who was fined for vending without a *vending permit* provides proof of a valid *vending permit* issued by the City that is applicable on the date of the violation, the administrative fines shall be reduced to the administrative fine schedule set forth in section 36.0110(a).

(d) [No change in text.]

§36.0111 Impounding of Vending Equipment

(a) The City may impound *vending equipment* and any *goods* therein, for any of the following reasons:

(1) leaving *vending equipment* or *goods* unattended in violation of section 36.0105(k);

(2) *vending prohibited goods* in violation of section 36.0109;

(3) *vending* without a valid *vending permit* in violation of section 36.0110(b);

(4) *vending* food without a valid and displayed San Diego County Environmental Health Permit in violation of section 36.0105(h);

(5) *vending* in violation of this Division and the *sidewalk vendor* refuses or fails to provide identification upon request by an Enforcement Official;

(6) *vending* in apparent violation of this Division and the *sidewalk vendor* refuses or fails to remove the *vending equipment* from the *sidewalk, park, or other property* within 30 consecutive minutes after being instructed to do so by an Enforcement Official;

- (7) *vending* in a manner that blocks or obstructs the free movement of pedestrians or other traffic on *sidewalks* and fails to maintain a minimum of 48 inches of accessible path of travel in violation of section 36.0105(m);
 - (8) *vending* in a manner that creates an imminent and substantial danger or environmental hazard to the health, safety, or general welfare of the public or the property at the location of the *vending equipment*. Examples include discharge of oil, grease, or other slippery substance without any effort to maintain best management practices; using unapproved portable cooking equipment, heating element, gas-fueled appliance, generator, or any open flame; using cooking equipment without a fire extinguisher; or *vending* during urgent or emergency public safety events or incidents; or
 - (9) *vending* by a *sidewalk vendor* who has, within a 24-month period, been issued three or more administrative citations for violations of this Division.
- (b) *Vending equipment* or *goods* that are evidence of a crime or booked as property after arrest of a *sidewalk vendor* for violation of any local, state, or federal laws or regulations, excluding this Division, may be impounded in accordance with San Diego Police Department's applicable policies and procedures.
 - (c) The City may immediately dispose of impounded *goods* that cannot be safely stored or that are perishable.

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(COR. COPY 2)

- (d) Any owner of impounded *vending equipment* or any *goods* may, within 10 days, request an administrative hearing before a hearing officer appointed by the City.
- (e) The City Manager shall provide the person from whom the *goods* or *vending equipment* were taken with a receipt and instructions for retrieval of the impounded items, excluding any items that were disposed of according to section 36.0111(c). The receipt and instructions shall either be given to the person from whom the items were taken at the time of impound or shall be mailed within two business days of the impound to the address received by the City when the person applied for a *vending permit*.
- (f) Impounded *vending equipment* and *goods*, excluding any items that were disposed of according to section 36.0111(c), will be released to the *sidewalk vendor* or owner provided that proper proof of ownership is presented, and the City receives payment in full of all administrative costs incurred as a result of the violation. Any unclaimed items will be considered abandoned and forfeited to the City after 90 days following impoundment.

§36.0113 Non-Applicability

The following persons, entities, or activities are exempt from the requirements of this Division:

- (a) any person engaged in *expressive activity* authorized by Chapter 6, Article 3, Division 5 of this Code;

- (b) agencies of any federal, state, or local governments;
- (c) any person engaged in commercial activity or providing *services* in *parks* authorized by section 63.0102(c)(14); and
- (d) any lessee or permittee of the City *vending* on City-owned property where *vending* is authorized under a City lease or permit.

§36.0114 [Reserved]

Section 2. That Chapter 5, Article 4, Division 1 of the San Diego Municipal Code is amended by amending sections 54.0105 and 54.0122, to read as follows:

§54.0105 Sidewalk Sales and Displays Prohibited

- (a) Except as provided in section 54.0105(b) and (c), it is unlawful for any person to place, or allow to remain, any goods, wares, baggage, personal property or merchandise on any sidewalk or curb, between the outer edge of the sidewalk or curb and the property line.
- (b) Section 54.0105(a) does not:
 - (1) prohibit any person from loading or unloading goods, wares, or merchandise in front of the person's place of business;
 - (2) prohibit any person from leaving any goods, wares or merchandise on any sidewalk for the length of time necessary for loading or unloading them;
 - (3) prohibit any person from loading or unloading attended baggage or personal property into or from a means of transportation; or

- (4) prohibit sidewalk vending authorized by Chapter 3, Article 6, Division 1.
- (c) Sidewalk sales may be permitted in a Special Event Venue pursuant to a Special Event Permit issued under Chapter 2, Article 2, Division 40 of this Code.

§54.0122 Prohibitions and Regulations Applicable to the Sale or Distribution of Merchandise or Services from Vehicles

- (a) Purpose and Intent. The City Council hereby finds and declares that the unrestricted sale or distribution or the offering for sale or distribution of merchandise or services from vehicles within or upon public streets, sidewalks and rights of way, *public property*, or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians thereby exposed to hazards from other vehicular traffic in the vicinity.
- (b) Definitions.
 - (1) The terms *vehicle*, *street*, and *highway* are defined in Division 1 of the California Vehicle Code.
 - (2) *Public property* shall mean any real property owned or controlled by or leased or assigned to a governmental entity excluding such property as had been leased out by that entity for nongovernmental purposes. It shall also include unimproved *streets* and rights of way or similar easements for public access and use over which the public entity has a legal interest or right of control, other than a publicly maintained *street* or *highway*.

(c) Prohibitions. No merchandise or services shall be sold or distributed or offered for sale or distribution from a *vehicle* on a *street* or *highway* unless the *vehicle* is first lawfully parked or stopped and then remains for no longer a period of time than is necessary to complete the immediate sale. An operator is considered to be engaged in an “immediate sale” when there are patrons waiting in line for service. Operators of such *vehicles* shall maintain a minimum clear space of ten feet both in front of and behind the *vehicle* to allow for pedestrian safety and safe sight distance for approaching motorists. No sales or distribution shall be made when the designated minimum clear space of ten feet does not exist.

(d) [Reserved]

(e) through (h) [No change in text.]

Section 3. That Chapter 5, Article 7, Division 00 of the San Diego Municipal Code is amended by repealing sections 57.10 and 57.10.1.

Section 4. That Chapter 6, Article 3, Division 00 of the San Diego Municipal Code is amended by retitling and amending section 63.20.20, to read as follows:

§63.20.20 Sale or Rental of Vessels in Beach Areas

It is unlawful for any person to beach or moor any vessel for the purpose of displaying it for rental or sale, in any *beach area*, as defined in Municipal Code section 63.20, including Mission Bay Park, unless specifically permitted to do so

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by the Director. Commercial fishers are permitted to use *beach areas* provided that their activity does not interfere with recreation.

If advertising of any kind, other than incidental advertising permanently affixed to the side of a vehicle, is displayed in the *beach area*, it shall constitute prima facie evidence that the actions of the person responsible for introducing the advertising within the *beach area* violate this section.

Persons convicted of this offense shall be punished by the following minimum fines:

First Offense— \$50.00

Second Offense— \$300.00

Third and future offenses— \$700.00

Section 5. That Chapter 6, Article 3, Division 1 of the San Diego Municipal Code is amended by amending section 63.0102, to read as follows:

§63.0102 Use of Public Parks and Beaches Regulated

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

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Beach areas [No change in text.]

Expressive activity has the same meaning as in San Diego Municipal Code section 63.0502.

Open space through *Park* [No change in text.]

(O-2024-73)
(COR. COPY 2)

Services are activities involving the performance of work for others, the rental of furniture or equipment for an activity or event, or the provision of intangible items to a group of four persons or more at the same time that cannot be returned once they are provided. Examples include massage, yoga, dog training, fitness classes, equipment rental, and staging for picnics, bonfires or other activities.

Sidewalk vending has the same meaning as in San Diego Municipal Code section 36.0102.

- (c) It is unlawful for any person within any *park* to do any of the acts listed in San Diego Municipal Code section 63.0102(c).

(1) through (6) [No change in text.]

- (7) Glass Containers. It is unlawful to have, possess, or use any container made of glass, except in locations where such containers are permitted under the terms of a lease, operating agreement, or permit.

(8) through (12) [No change in text.]

- (13) Sale of Merchandise.

- (A) Except *expressive activity* authorized by Chapter 6, Article 3, Division 5 of this Code and *sidewalk vending*, it is unlawful to sell or offer for sale any goods, wares, merchandise, article, or thing whatsoever without the written consent of the City Manager.

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(COR. COPY 2)

- (B) All *sidewalk vending* in any *park* shall comply with the requirements of Chapter 3, Article 6, Division 1 of this Code.
- (14) Commercial Activity and Services. Except *expressive activity* authorized by Chapter 6, Article 3, Division 5 of this Code and *sidewalk vending* authorized by Chapter 3, Article 6, Division 1, it is unlawful to carry on or conduct commercial activity, to provide any *service*, or to solicit offers to purchase, barter, or to require someone to negotiate, establish, or pay a fee before providing a *service*, even if characterized as a donation, without the written consent of the City Manager. Written consent of the City Manager includes commercial activity and *services* allowed as part of a lease, permit, or other written permission from the City.
- (15) Shows. Except *expressive activity* authorized by Chapter 6, Article 3, Division 5, it is unlawful to set up, maintain, or give any exhibition, show, performance, lecture, concert, place of amusement, or concert hall without the written consent of the City Manager.
- (16) through (17) [No change in text.]
- (18) Direction from Park Ranger. It is unlawful for any person to refuse to follow or comply with any lawful order, signal, or other direction of a park ranger, or to knowingly provide false information to a park ranger.
- (19) through (28) [No change in text.]

(d) through (g) [No change in text.]

Section 6. That Chapter 6, Article 3 of the San Diego Municipal Code is amended by adding new Division 5 and new sections 63.0501, 63.0502, 63.0503, 63.0504, 63.0505, and 63.0506, to read as follows:

**Chapter 6: Public Works and Property, Public Improvement
and Assessment Proceedings**

**Article 3: Public Parks, Playgrounds, Beaches, Tidelands and
Other Property**

Division 5: Expressive Activity on Public Property

§63.0501 Findings and Purpose

- (a) The Council finds the City is committed to protecting and preserving the rights of persons engaged in *expressive activity* on public property, as protected by the First Amendment to the United States Constitution and by the California Constitution. *City parks, plazas, and sidewalks* have served as a traditional forum for performances, visual artists, and other *expressive activity*. Unregulated *expressive activity* has led to challenges for first responders to access emergency situations, has intensified competing interests in available space, and has increased the incidents of physical altercations among *sidewalk vendors* and persons engaged in *expressive activity*. Unregulated *expressive activity* has also limited the accessibility of common walkways and the safe flow of pedestrian and other traffic in some areas.

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- (b) The Council further finds that certain *parks, plazas, and high-traffic areas* constitute major tourist attractions, host significant numbers of people annually, and contain limited geographic space. Visitors, tourists, *sidewalk vendors*, and people engaged in *expressive activity* compete for space in these locations. The Council finds that authorizing the City Manager to designate areas for persons engaged in *expressive activity* using equipment or furniture in certain *parks, plazas, and high-traffic areas* will reduce tensions and physical altercations associated with competing for limited space, and will ensure those engaged in *expressive activity* are able to engage their intended audiences without having to compete with commercial vendors. Additionally, the ability to designate *expressive activity areas* in certain *parks, plazas, and high traffic areas* where daily visitation is significant and where the proliferation of commercial activity potentially interferes with historic and cultural opportunities and preservation activities is necessary to protect and preserve these areas for everyone.
- (c) The Council further finds it necessary to adopt reasonable regulations on *expressive activity* to address the competing interests and uses of public property, including *parks, plazas, sidewalks and high-traffic areas*, with the City's need to preserve public health and safety, and to preserve access to and enjoyment of public property.
- (d) It is the purpose of this Division to adopt regulations for persons engaged in *expressive activity* to protect public health and safety, preserve historic and cultural opportunities, and prevent altercations arising from competing

uses of space in *parks, plazas, sidewalks, and high-traffic areas*. This Division does not apply to *sidewalk vendors*.

§63.0502 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Above-ground structure means any structure affixed to a *sidewalk* or other walkway owned, maintained, or authorized by the City, including a street light, tree well, parking meter, utility structure, utility box, bike rack, scooter corral, mailbox, trash can, elevator, kiosk, newspaper rack, picnic shelter, bench, table, wall, sign pole, traffic signal pole, signal push button pole, and stairs.

Expressive activity means all forms of speech and expressive conduct, including (1) the distribution of non-commercial information; (2) solicitation of funds, donations, subscriptions, or signatures for a charity, religious organization, non-profit organization, or government entity; (3) performances; and (4) the sale of artwork, recordings of performances, or other items that are inherently communicative in nature and have only nominal value or purpose apart from its communication. Items that are inherently communicative in nature include newspapers, leaflets, pamphlets, bumper stickers, buttons, books, audio, video, compact discs, video discs, records, *visual art* sold by the artist, including prints of the artist's *visual art*, political campaigning activity such as distribution of campaign signs, stickers, or other campaign materials, face painting, and painting henna tattoos. *Expressive activity* does not include: the sale of food; the sale or creation of *handcrafts*, skin care and beauty products; the sale of natural found

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items, such as stones and gems; the provision of personal services, such as massage or hair styling; the application of substances or *handcrafts* to others such as piercings or skin care products; teaching yoga or exercise classes; or the creation or sale of mass-produced merchandise or *visual art*.

Expressive activity area means areas within *parks, plazas, and high-traffic areas* designated by the City Manager pursuant to section 65.0504 of this Code.

Handcrafts means objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, welding, or beading, including necklaces, earrings, bracelets, rings, and other jewelry used or intended for personal adornment, pottery, silver or metal work, leather goods, and trinkets. *Handcrafts* are objects not likely to communicate a message, idea, or concept to others, are often mass-produced or produced with limited variation, and often have functional utility apart from any communicative value they might have.

High-traffic areas means the following bike and shared-use paths: Bayside Walk; Bayshore Bikeway; Coast Boulevard Boardwalk between Jenner Street and Cuvier Street, including popouts; Crown Point Bike Path; La Jolla Shores Boardwalk; Liberty Station NTC Path; Mission Bay Bike Path; MLK Promenade; Ocean Boulevard Bike Path; Ocean Beach Bike Path; Ocean Front Walk; San Diego River Bike Path; Scripps Park Boardwalk, which runs along the perimeter of Ellen Browning Scripps Park; and the following sidewalks: Columbia Street; Kettner Boulevard; India Street between Ash Street and West Kalmia Street; and San Diego Avenue between Conde Street and Twiggs Street.

Park has the same meaning as in San Diego Municipal Code section 63.0102.

Plaza has the same meaning as in San Diego Municipal Code section 36.0102.

Services has the same meaning as in San Diego Municipal Code section 36.0102.

Sidewalk has the same meaning as in San Diego Municipal Code section 36.0102.

Visual art means sculptures, drawings, or paintings applied to paper, cardboard, canvas, or other similar or equivalent medium through the use of brush, pastel, crayon, pencil, stylus, or other object.

§63.0503 Expressive Activity Generally

- (a) Applicability. This Division applies to persons engaged in *expressive activity* alone or in small groups. It does not apply to spontaneous *expressive activity* by large groups, such as parades and protests, or to permitted events.
- (b) Any person engaged in *expressive activity* shall not:
 - (1) occupy a space greater than eight feet in length or four feet in width, including any equipment or display, unless the person is in an *expressive activity area* where a larger space has been set aside for *expressive activity* by the City Manager;
 - (2) display any merchandise for sale on the ground or on any *above-ground structure*;
 - (3) conduct *expressive activity* in a way that blocks the safe flow of pedestrians or other traffic or that blocks designated emergency ingress or egress routes, including blocking the *sidewalk* in a manner that reduces the useable *sidewalk* area to less than 48 inches; or

- (4) attach any equipment, display, or merchandise to any utility pole, street sign, bus stop, trash can, traffic pole, or other public structure.
- (c) All persons engaged in *expressive activity* using amplification or non-amplified sound-making devices, such as speakers, microphones, or public address systems, shall comply with section 59.5.0502(f) of this Code at all times, unless the person is in an *expressive activity area* where louder amplification has been authorized for *expressive activity* by the City Manager.

§63.0504 Expressive Activity Areas

- (a) The City Manager may designate *expressive activity areas* that shall be available, on a first-come, first-served basis, to persons who desire to use equipment, including a table, easel, stand, chair, umbrella, sunshade, or other furniture as part of their *expressive activity*. *Expressive activity areas* may be established within a *park, plaza, or other high-traffic area* when the City Manager determines one or more of the following is true:
 - (1) there is a substantial interest in designating *expressive activity areas* to provide for safe ingress and egress of people and emergency and public safety vehicles and personnel based on the existing paths of travel and emergency and public safety access routes within a specific area of the *park, plaza, or high-traffic area*;

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- (2) the capacity of the *park, plaza, or high-traffic area* and the daily visitation rates are likely to create significant congestion on roads and walkways such that paths of travel are likely to be impassable or unsafe;
 - (3) the natural or developed landscape could be damaged as a result of continual use for *expressive activity* if not contained to specific areas within the *park, plaza, or high-traffic area*; or
 - (4) there is a substantial interest in designating *expressive activity areas* adjacent to events occurring in a *park, plaza, or high-traffic area*, including private events and special events permitted pursuant to Chapter 2, Article 2, Division 40 of this Code, when the City Manager determines *expressive activity areas* are necessary to provide for safe ingress and egress of persons and use of emergency and public safety access routes in and around the event.
- (b) If the City Manager designates *expressive activity areas* within a *park, plaza, or high-traffic area*, all persons engaged in *expressive activity* who use equipment, including a table, easel, stand, chair, umbrella, sunshade, or other furniture as part of their *expressive activity*, shall confine their activities to one of the *expressive activity areas*.
- (c) *Expressive activity areas* shall be used for *expressive activity* only. No person shall engage in sidewalk vending regulated by Chapter 3, Article 6, Division 1, or sell any food, *handcraft*, or mass produced *visual art* that does not constitute *expressive activity* within an *expressive activity area*.

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(COR. COPY 2)

- (d) A person may only use one *expressive activity area* at a given time.
- (e) No person shall purchase, sell, barter, or exchange any space within an *expressive activity area* with another person or reserve or hold space within an *expressive activity area* for another person.
- (f) Any person who fails to comply with this section 63.0504 may be asked to leave the *expressive activity area* and may be subject to the penalties and fines in section 63.0506.

§63.0505 Services and Sales of Handcrafts and Mass-Produced Visual Art

Vendors of *handcrafts* or mass-produced *visual art* and vendors of *services* shall comply with the Sidewalk Vending Regulations in Chapter 3, Article 6, Division 1, for all vending activities in *parks, plazas, beach areas*, and on *sidewalks* that are not otherwise authorized by a special event permit, lease, or other advance written approval by the City Manager.

§63.0506 Penalties and Fines

- (a) Any violation of this Division shall be subject to the following:
 - (1) an administrative citation and \$100 penalty for a first violation.
 - (2) an administrative citation and \$200 penalty for a second violation within one year of the first violation.
 - (3) an administrative citation and \$500 penalty for a third and each subsequent violation within one year of the first violation.
- (b) Administrative citations may be appealed pursuant to Chapter 1, Article 2, Division 5 of this Code and all appeals shall be conducted in accordance with Chapter 1, Article 2, Division 4.

(O-2024-73)
(COR. COPY 2)

- (1) In addition to the powers conferred upon the enforcement hearing officer under section 12.0407 of this Code, such officer shall take into consideration the person's ability to pay the fine upon their request. If the enforcement hearing officer finds the person meets the criteria described in California Government Code section 68632(a) or (b), or any successor section, the enforcement hearing officer shall order the City to accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this Division.
- (2) The enforcement hearing officer shall have the authority to allow the person to complete community service in lieu of paying the total administrative fine.

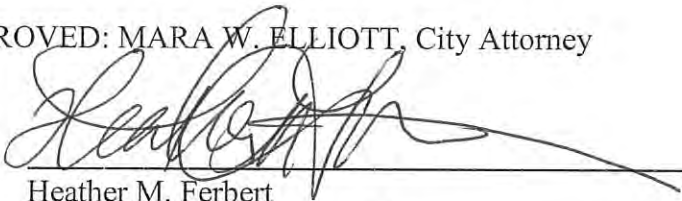
Section 7. That in accordance with San Diego Ordinance O-21577 (Dec. 14, 2022), the Sidewalk Vending Regulations, as amended by this Ordinance and applicable in the Coastal Overlay Zone is not subject to certification by the California Coastal Commission and are not an amendment to the Local Coastal Program.

Section 8. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

(O-2024-73)
(COR. COPY 2)

Section 9. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Heather M. Ferbert
Senior Chief Deputy City Attorney

HMF:sc:cm
02/08/2024
02/12/2024 COR. COPY
03/15/2024 COR. COPY 2
Or.Dept: Council District 2
Doc. No. : 3595805

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of FEB 27 2024.

DIANA J.S. FUENTES
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

(See attached memo and signature page.)

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: March 15, 2024
TO: Sean Elo-Rivera, Council President
FROM: City Attorney
SUBJECT: Item S502: Municipal Code Amendments to the Sidewalk Vending Ordinance heard on February 13, 2024.

Attached please find the Corrected Copy 2 Ordinance for Item S502: O-2024-73 (O-21775), Sidewalk Vending, Commercial Activity, and Expressive Activities on Public Property, introduced on Tuesday, February 13, 2024.

An error was discovered in Section 36.0113, "Non-Applicability" and it should read as follows:

§36.0113 Non-Applicability

- (c) any person engaged in commercial activity or providing *services in parks* authorized by section 63.0102(c)(14); and

The reference to section 63.0102 was changed from (b)(14) to (c)(14). No other changes were made. Thank you.


HMF:sc
Doc. No.: 3595802

Attachments:
O-2024-73 COR. COPY 2 Clean and Strikeout
cc: Luz Anaya Luna, Director of Legislative Affairs
Heidi Palmer, Legislative Assistant

(O-2024-73)
(COR. COPY)

Section 9. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
for Heather M. Ferbert
Senior Chief Deputy City Attorney

HMF:sc:cm
02/08/2024
02/12/2024 COR. COPY
Or.Dept: Council District 2
Doc. No.: 3557898

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of FEB 27 2024.

DIANA J.S. FUENTES
City Clerk

By 
Deputy City Clerk

Approved: 2/20/24
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 6, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING AND AMENDING SECTION 36.0101, AMENDING SECTIONS 36.0102 AND 36.0105, RETITLING AND AMENDING SECTION 36.0107, AMENDING SECTIONS 36.0108, 36.0110, 36.0111, AND 36.0113, AND RETITLING AND AMENDING SECTION 36.0114; AMENDING CHAPTER 5, ARTICLE 4, DIVISION 1 BY AMENDING SECTIONS 54.0105 AND 54.0122; AMENDING CHAPTER 5, ARTICLE 7, DIVISION 00 BY REPEALING SECTIONS 57.10 AND 57.10.1; AMENDING CHAPTER 6, ARTICLE 3, DIVISION 00 BY RETITLING AND AMENDING SECTION 63.20.20; AMENDING CHAPTER 6, ARTICLE 3, DIVISION 1 BY AMENDING SECTION 63.0102; AND AMENDING CHAPTER 6, ARTICLE 3 BY ADDING NEW DIVISION 5 AND NEW SECTIONS 63.0501, 63.0502, 63.0503, 63.0504, 63.0505, AND 63.0506, ALL RELATING TO SIDEWALK VENDING, COMMERCIAL ACTIVITY, AND EXPRESSIVE ACTIVITIES ON PUBLIC PROPERTY.

§36.0101 Title and Purpose

(a) Title. This Division shall be known as the Sidewalk Vending Regulations.

~~This Division regulates sidewalk vendors on public property.~~

(b) Purpose and Intent. It is the purpose and intent of this Division to provide

for the regulation of sidewalk vendors on public property pursuant to

California Government Code sections 51036 through 51039. The Council

finds and declares that these regulations are directly related to objective

health, safety, and welfare concerns created by competing uses of

sidewalks by residents, visitors, and sidewalk vendors. The Council further finds and declares that regulations on sidewalk vending in City parks and beach areas are necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities and are necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the parks and beach areas.

§36.0102 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply to Chapter 3, Article 6, Division 1; words and phrases whenever used in this Division shall be construed as defined in this section, unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

Above-ground structure through Ballpark District [No change in text.]

Beach area has the same meaning as in section 63.20 of this Code.

Best management practices through Encroachment Permit [No change in text.]

Expressive activity has the same meaning as in section 63.0502 of this Code.

Gaslamp Quarter District through Major transit stop [No change in text.]

Park has the same meaning as in section 63.0102(b) of this Code.

Permittee through Portable cooking equipment [No change in text.]

Public park means any property designated, dedicated or developed by or on behalf of the City of San Diego for park or open space use, including *sidewalks* and paths within the park or immediately adjacent to the park perimeter.

Public right-of-way through *School* [No change in text.]

Services are activities involving the performance of work for others or the provision of intangible items directly to a person or to a group of people at the same time that cannot be returned once they are provided. Examples include hair ~~braiding~~ styling, ~~face painting~~, massage, yoga, ~~fortune telling~~, ~~tattooing~~, exercise classes, and dog training.

Sidewalk [No change in text.]

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

Stationary sidewalk vendor through *Summer moratorium* [No change in text.]

Vend or *vending* means with respect to any *goods* or services, to sell, offer to sell, expose or display for sale, solicit offers to purchase, barter, or require someone to negotiate, establish, or pay a fee before providing *goods* or services, even if characterized as a donation, on a public street, alley, highway, parking lot, *sidewalk*, or *public right-of-way*.

Vending equipment means any *conveyance*, table, ~~pushcart~~, stand, display, ~~pedal-driven cart~~, wagon, showcase, rack, or any other free-standing equipment used for *vending* on the *sidewalk*.

Vending permit [No change in text.]

§36.0105 Sidewalk Vending Generally

- (a) through (g) [No change in text.]
- (h) Sidewalk vendors engaged in the vending of food or beverages shall display a valid San Diego County Environmental Health Permit and have hand sanitizer located in a conspicuous location readily available for use by customers.
- (i) [No change in text.]
- (j) No ~~vending vendor~~ shall ~~take place in or from a parked vehicle or~~ vend to any ~~individuals~~ person traveling in a motor vehicle along a public roadway. Vending in or from a parked vehicle is addressed in section 54.0122.
- (k) through (l) [No change in text.]
- (m) To maintain accessibility standards, *sidewalk vendors* shall not place or allow any obstruction to be placed on the *sidewalk* that would reduce the width of the *sidewalk* to less than ~~forty-eight~~ 48 inches excluding the curb, except for the brief duration of time for a *roaming sidewalk vendor* to conduct a sale. Notwithstanding the foregoing, *sidewalk vendors* shall immediately move to provide access to the *sidewalk* to avoid impeding the flow of pedestrian or other traffic.
- (n) [No change in text.]
- (o) *Sidewalk vendors* shall not ~~sell or offer to sell services,~~ or engage in or offer to engage in any type of rental activity, including the rental of any *goods* or *services*.

(p) through (u) [No change in text.]

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

The following provisions apply in ~~public~~ parks, plazas, and beach areas beach areas. Where the following provisions are more restrictive than those set forth in section 36.0106, *sidewalk vendors* shall comply with the more restrictive provisions:

- (a) *Sidewalk vendors* shall stop *vending* before the designated closing time of ~~any public~~ the park, plaza, and beach area or beach area.
- (b) *Vending* is permitted between 8:00 a.m. and sunset in ~~public~~ parks, plazas, and beach areas beach areas where there is no designated closing time.
- (c) [No change in text.]
- (d) *Sidewalk vendors* shall not *vend* within 25 feet of any ~~park~~ decorative fountain, statue, monument, memorial, or art installation.
- (e) Subject to applicable law, the City Manager is authorized to enact rules and regulations to prohibit *vending* in any space that would obstruct, damage or otherwise adversely affect the public's use and enjoyment of natural resources and recreation opportunities or contribute to an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of a *public park*. ~~If the City Manager enacts any such rules and regulations pursuant to section 36.0107(e), it shall be unlawful to vend in violation of any such rules and regulations.~~

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- (f) *Stationary sidewalk vendors* are not permitted within any area of a *public park* or *plaza* if the *public park* or *plaza* operator has signed an agreement for concessions that exclusively permits the sale of *goods* or *services* by a specified concessionaire, provided that notice by signage or other means is provided to the *stationary sidewalk vendor*.
- (g) [No change in text.]
- (h) Consistent with applicable law, the City Manager has the authority to reasonably limit the number of *sidewalk vendors* in certain ~~parks~~ parks by requiring *sidewalk vendors* to obtain an additional park sales permit to *vend* in the following ~~parks~~ locations: Balboa Park, Mission Bay Park, Ocean Beach Park, Mission Beach Park, Kellogg Park, Ocean Boulevard Park, Ellen Browning Scripps Park, South Mission Beach Park, and Torrey Pines City Park. ~~If the City Manager requires an additional park sales permit pursuant to section 36.0107(h), it shall be unlawful to vend in such park without such permit.~~
- (i) *Vending* is prohibited during the *summer moratorium* in Balboa Park, Mission Bay Park, and the Shoreline Parks, which are those ~~parks~~ parks contiguous to the shoreline or beach in the communities of Ocean Beach, Mission Beach, Pacific Beach, and La Jolla.
- (j) through (k) [No change in text.]

§36.0108 Sidewalk Vending Equipment and Goods

- (a) [No change in text.]
- (b) *Sidewalk vendors* shall not:

(1) through (4) [No change in text.]

(5) set up customer seating areas.

(i) *Sidewalk vendors* may only have a chair for personal use.

(ii) *Sidewalk vendors* that do not serve food or beverages may use tables only for *vending* purposes, such as conducting transactions or displaying *goods* for sale.

(iii) *Sidewalk vendors* that serve food or beverages must conduct all *vending* from a permitted *conveyance* in accordance with their health permit from the County Department of Environmental Health and Quality.

(c) through (f) [No change in text.]

§36.0110 Penalties and Fines

(a) Any violation of this Division by a *sidewalk vendor* holding a valid *vending permit* shall be ~~punished as follows~~ subject to the following:

(1) ~~a written administrative warning and a referral to a community-based organization for small business technical assistance for a first violation~~ an administrative citation and \$100 penalty for a first violation.

(2) through (3) [No change in text.]

(b) Any *sidewalk vendor* found *vending* without a *vending permit*, if required pursuant to this Division, shall immediately cease *vending* and be subject to the following:

- (1) ~~a written administrative warning and a referral to a community-based organization for small business technical assistance an administrative fine of \$250 for a first violation.~~
- (2) through (3) [No change in text.]
- (c) If a *sidewalk vendor* who was fined for vending without a vending permit provides proof of a valid *vending permit* issued by the City that is applicable on the date of the violation, the administrative fines shall be reduced to the administrative fine schedule set forth in section 36.0110(a).
- (d) [No change in text.]

§36.0111 Impounding of Vending Equipment

- (a) ~~In addition to the administrative fines authorized by section 36.0110, the City may, upon an individual's fourth or greater violation of this Division,~~ The City may impound *vending equipment* and any *goods* therein, provided that the fourth or greater violation involves one or more of the following for any of the following reasons:
 - (1) ~~Leaving~~ vending equipment or *goods* unattended in violation of section 36.0105(k); ~~or~~
 - (2) ~~Vending~~ prohibited *goods* in violation of section 36.0109; ~~or~~
 - (3) ~~Vending~~ without a valid *vending permit* in violation of section 36.0110(b);~~;~~
 - (4) vending food without a valid and displayed San Diego County Environmental Health Permit in violation of section 36.0105(h);

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- (5) vending in violation of this Division and the sidewalk vendor
refuses or fails to provide identification upon request by an
Enforcement Official;
- (6) vending in apparent violation of this Division and the sidewalk
vendor refuses or fails to remove the vending equipment from the
sidewalk, park, or other property within 30 consecutive minutes
after being instructed to do so by an Enforcement Official;
- (7) vending in a manner that blocks or obstructs the free movement of
pedestrians or other traffic on sidewalks and fails to maintain a
minimum of 48 inches of accessible path of travel in violation of
section 36.0105(m);
- (8) vending in a manner that creates an imminent and substantial
danger or environmental hazard to the health, safety, or general
welfare of the public or the property at the location of the vending
equipment. Examples include discharge of oil, grease, or other
slippery substance without any effort to maintain best management
practices; using unapproved portable cooking equipment, heating
element, gas-fueled appliance, generator, or any open flame; using
cooking equipment without a fire extinguisher, or vending during
urgent or emergency public safety events or incidents; or
- (9) vending by a sidewalk vendor who has, within a 24-month period,
been issued three or more administrative citations for violations of
this Division.

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(b) Vending equipment or goods that are evidence of a crime or booked as property after arrest of a sidewalk vendor for violation of any local, state, or federal laws or regulations, excluding this Division, may be impounded in accordance with San Diego Police Department's applicable policies and procedures.

~~(b)~~(c) The City may immediately dispose of impounded *goods* that cannot be safely stored or that are perishable.

~~(e)~~(d) Any owner of impounded *vending equipment* or any *goods* may, within 10 days, request an administrative hearing before a hearing officer appointed by the City.

~~(d)~~(e) ~~Within two business days of impoundment, the sidewalk vendor or the owner of the goods or vending equipment will receive notice based on the information contained in the vending permit application regarding their rights with respect to the impoundment citation. Failure to provide such notification within two business days shall prohibit the City from charging more than 15 days of impoundment when the owner or sidewalk vendor redeems the impounded goods or vending equipment. The City Manager shall provide the person from whom the goods or vending equipment were taken with a receipt and instructions for retrieval of the impounded items, excluding any items that were disposed of according to section 36.0111(c). The receipt and instructions shall either be given to the person from whom the items were taken at the time of impound or shall be mailed within two~~

business days of the impound to the address received by the City when the person applied for a vending permit.

- (f) The Impounded vending equipment and goods, excluding any items that were disposed of according to section 36.0111(c), will be released to the sidewalk vendor or owner provided that proper proof of ownership is presented, and the City receives payment in full of all administrative costs incurred as a result of the violation. Any unclaimed items will be considered abandoned and forfeited to the City after 90 days following impoundment.

§36.0113 Non-Applicability

- (a) The following persons, entities, or activities are exempt from the requirements of this Division:

- ~~(1)(a)~~ Any vendor or individual any person engaged solely in artistic performances, free speech, political or petitioning activities, or engaged solely in vending of items constituting expressive activity protected by the First Amendment, such as newspapers, leaflets, pamphlets, bumper stickers, or buttons expressive activity authorized by Chapter 6, Article 3, Division 5 of this Code;
- ~~(2)(b)~~ Agencies of any federal, state, or local governments;
- ~~(3)(c)~~ Any vendor of services that are otherwise permitted or authorized by the City of San Diego person engaged in commercial activity or providing services in parks authorized by section 63.0102(c)(14); and

(4)(d) ~~A~~ny lessee or permittee of the City *vending* on City-owned property
where *vending* is authorized under a City lease or permit.

§36.0114 ~~Vending that Constitutes an Imminent and Substantial Safety or Environmental Hazard [Reserved]~~

~~The City may require any *sidewalk vendor* to leave the premises or to remove any *vending equipment* or *goods* if the *sidewalk vendor* is creating an imminent and substantial safety or environmental hazard by the location of the *vending equipment* or the nature of the *goods* being offered for sale. If the *sidewalk vendor* refuses to leave the premises or to remove any *vending equipment* or *goods* constituting an imminent and substantial safety or environmental hazard, the City may immediately impound the *vending equipment* or the *goods* being offered for sale. Any *vending equipment* or *goods* impounded are subject to the provisions of section 36.0111.~~

§54.0105 Sidewalk Sales and Displays Prohibited

- (a) Except as provided in ~~S~~ection 54.0105(b) and (c), it is unlawful for any ~~P~~erson to place, or allow to remain, any goods, wares, baggage, personal property or merchandise on any sidewalk or curb, between the outer edge of the sidewalk or curb and the property line.
- (b) Section 54.0105(a) does not:
- (1) prohibit any ~~P~~erson from loading or unloading goods, wares, or merchandise in front of the ~~P~~erson's place of business;

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- (2) prohibit any Person from leaving any goods, wares or merchandise on any sidewalk for the length of time necessary for loading or unloading them;
 - (3) prohibit any Person from loading or unloading attended baggage or personal property into or from a means of transportation; or
 - (4) prohibit sidewalk vending authorized by Chapter 3, Article 6, Division 1.
- (c) Sidewalk sales may be permitted in a Special Event Venue pursuant to a Special Event Permit issued under Chapter 2, Article 2, Division 40 of this Code ~~or with a Sidewalk Vending Permit issued under Chapter 3, Article 6, Division 1.~~

§54.0122 Prohibitions and Regulations Applicable to the Sale or Distribution of Merchandise or Services from Vehicles

- (a) Purpose and Intent. The City Council hereby finds and declares that the unrestricted sale or distribution or the offering for sale or distribution of merchandise or services from vehicles within or upon public streets, sidewalks and rights of way, ~~public property~~ public property, or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians thereby exposed to hazards from other vehicular traffic in the vicinity. ~~The City Council further finds that the unauthorized use of public property for private commercial activity constitutes a misuse of public property and tax money and that similar activity on private property when not in~~

~~conformity with health, safety, zoning and land use regulation is contrary to the public welfare.~~

(b) Definitions.

(1) The terms ~~“vehicle,” “street,” and “highway”~~ vehicle, street, and highway are defined by in Division 1 of the California Vehicle Code of California.

(2) ~~“Public property”~~ Public property shall mean any real property owned or controlled by or leased or assigned to a governmental entity excluding such property as had been leased out by that entity for nongovernmental purposes. It shall also include unimproved ~~streets~~ streets and rights of way or similar easements for public access and use over which the public entity has a legal interest or right of control, other than a publicly maintained ~~street~~ street or ~~highway~~ highway.

(c) Prohibitions. No merchandise or services shall be sold or distributed or offered for sale or distribution from a ~~vehicle~~ vehicle on a ~~street~~ street or ~~highway~~ highway unless the ~~vehicle~~ vehicle is first lawfully parked or stopped and then remains for no longer a period of time than is necessary to complete the immediate sale. An operator is considered to be engaged in an “immediate sale” when there are patrons waiting in line for service. Operators of such ~~vehicles~~ vehicles shall maintain a minimum clear space of ~~(10) ten~~ feet both in front of and behind the ~~vehicle~~ vehicle to allow for pedestrian safety and safe sight distance for approaching motorists. No

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sales or distribution shall be made when the designated minimum clear space of ten (10) feet does not exist.

(d) ~~No merchandise or services shall be sold or distributed or offered for sale or distribution, whether from a vehicle or otherwise, upon public property without the authorization of the public entity. [Reserved]~~

(e) through (h) [No change in text.]

§57.10 Fortune Telling, Etc., Advertising — Prohibited

~~It shall be unlawful for any person or persons to advertise by sign, circular, handbill or in any newspaper, periodical or magazine, or other publication or publications, or by any other means, to tell fortunes, to find or restore lost or stolen property, to locate oil wells, gold or silver or other ore or metal or natural product, to restore lost love or friendship or affection, to unite or procure lovers, husbands, wives, lost relatives or friends, for or without pay, by means of occult or psychic powers, facilities or forces, clairvoyance, psychology, psychometry, spirits, mediumship, seership, prophecy, astrology, palmistry, necromancy, or other craft, science, cards, talismans, charms, potions, magnetism or magnetized articles or substances, Oriental mysteries or magic of any kind or nature, or numerology, or to engage in or carry on any business the advertisement of which is prohibited in this Section and Subsections.~~

§57.10.1 Same — Exceptions

~~The provisions of this Section and Subsections shall not be construed to include, prohibit or interfere with the exercise of any religious or spiritual function of any priest, minister, rector or an accredited representative of any bona fide church or~~

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~~religion where such priest, minister, rector or accredited representative holds a certificate of credit, commission or ordination under the ecclesiastical laws of a religious corporation incorporated under the laws of any state or territory of the United States of America, or any voluntary religious association, and who fully conforms to the rites and practices prescribed by the supreme conference, convocation, convention, assembly, association or synod of the system or faith with which they are affiliated. Provided, however, that any church or religious organization which is organized for the primary purpose of conferring certificates of commission, credit or ordination for a price and not primarily for the purpose of teaching and practicing a religious doctrine or belief, shall not be deemed to be a bona fide church or religious organization.~~

~~§63.20.20 **Sale or Rental of Merchandise, Goods, Property, Etc. Prohibited; Exceptions**
Vessels in Beach Areas~~

~~It is unlawful for any person, firm, or corporation to attempt to carry on or to carry on any commercial operation, to rent or sell merchandise of any kind, or to beach or moor any vessel for the purpose of displaying it for rental or sale, in any *beach area*, as defined in Municipal Code section 63.20, including Mission Bay Park, unless licensed or otherwise specifically permitted to do so by the Director. This is specifically intended to include a commercial operation which involves delivering merchandise, a rental item, or a service to a *beach area* whether or not a financial transaction takes place within the *beach area*. Lessees and others who carry on a commercial operation under the terms of a formal agreement with the City are exempt from this section. Commercial fishers are permitted to use *beach areas* provided that their activity does not interfere with recreation.~~

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If advertising of any kind, other than incidental advertising permanently affixed to the side of a vehicle, is displayed in the *beach area*, it shall constitute prima facie evidence that the actions of the person, ~~firm, or corporation~~ responsible for introducing the advertising within the *beach area* violate this section.

Persons convicted of this offense shall be punished by the following minimum fines:

First Offense— \$50.00

Second Offense— \$300.00

Third and future offenses— \$700.00

§63.0102 Use of Public Parks and Beaches Regulated

(a) [No change in text.]

(b) Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Beach areas [No change in text.]

Expressive activity has the same meaning as in San Diego Municipal Code section 63.0502.

Open space through *Park* [No change in text.]

Services are activities involving the performance of work for others, the rental of furniture or equipment for an activity or event, or the provision of intangible items to a group of four persons or more at the same time that cannot be returned once they are provided. Examples include massage.

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yoga, dog training, fitness classes, equipment rental, and staging for picnics, bonfires or other activities.

Sidewalk vending has the same meaning as in San Diego Municipal Code section 36.0102.

(c) It is unlawful for any person within any *park* to do any of the acts listed in San Diego Municipal Code section 63.0102(c).

(1) through (6) [No change in text.]

(7) Glass Containers. It is unlawful to have, possess, or use any ~~cup, tumbler, jar, or~~ container made of glass and used for carrying or containing any liquid for drinking purposes, except in locations where such containers are permitted under the terms of a lease, operating agreement, or permit.

(8) through (12) [No change in text.]

(13) Sale of Merchandise.

(A) Except for those sales that are protected by the First Amendment expressive activity authorized by Chapter 6, Article 3, Division 5 of this Code and sidewalk vending, it is unlawful to sell or offer for sale any goods, wares, merchandise, article, or thing whatsoever without the written consent of the City Manager.

(B) Those sales that are protected by the First Amendment must conform to the City Manager's regulations. All sidewalk vending in any park shall comply with the

requirements of Chapter 3, Article 6, Division 1 of this Code.

- (14) ~~Solicitation~~ Commercial Activity and Services. Except expressive activity authorized by Chapter 6, Article 3, Division 5 of this Code and sidewalk vending authorized by Chapter 3, Article 6, Division 1, it is unlawful to practice, carry on, or conduct, or solicit for any trade, occupation, business or profession commercial activity, to provide any service, or to solicit offers to purchase, barter, or to require someone to negotiate, establish, or pay a fee before providing a service, even if characterized as a donation, without the written consent of the City Manager. Written consent of the City Manager includes commercial activity and services allowed as part of a lease, permit, or other written permission from the City.
- (15) Shows. Except expressive activity authorized by Chapter 6, Article 3, Division 5, it is unlawful to set up, maintain, or give any exhibition, show, performance, lecture, concert, place of amusement, or concert hall without the written consent of the City Manager.
- (16) through (17) [No change in text.]
- (18) ~~[Reserved.]~~ Direction from Park Ranger. It is unlawful for any person to refuse to follow or comply with any lawful order, signal, or other direction of a park ranger, or to knowingly provide false information to a park ranger.

(19) through (28) [No change in text.]

(d) through (g) [No change in text.]

**Chapter 6: Public Works and Property, Public Improvement
and Assessment Proceedings**

**Article 3: Public Parks, Playgrounds, Beaches, Tidelands and
Other Property**

Division 5: Expressive Activity on Public Property

§63.0501 Findings and Purpose

- (a) The Council finds the City is committed to protecting and preserving the rights of persons engaged in expressive activity on public property, as protected by the First Amendment to the United States Constitution and by the California Constitution. City parks, plazas, and sidewalks have served as a traditional forum for performances, visual artists, and other expressive activity. Unregulated expressive activity has led to challenges for first responders to access emergency situations, has intensified competing interests in available space, and has increased the incidents of physical altercations among sidewalk vendors and persons engaged in expressive activity. Unregulated expressive activity has also limited the accessibility of common walkways and the safe flow of pedestrian and other traffic in some areas.
- (b) The Council further finds that certain parks, plazas, and high-traffic areas constitute major tourist attractions, host significant numbers of people annually, and contain limited geographic space. Visitors, tourists, sidewalk

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vendors, and people engaged in expressive activity compete for space in these locations. The Council finds that authorizing the City Manager to designate areas for persons engaged in expressive activity using equipment or furniture in certain parks, plazas, and high-traffic areas will reduce tensions and physical altercations associated with competing for limited space, and will ensure those engaged in expressive activity are able to engage their intended audiences without having to compete with commercial vendors. Additionally, the ability to designate expressive activity areas in certain parks, plazas, and high-traffic areas where daily visitation is significant and where the proliferation of commercial activity potentially interferes with historic and cultural opportunities and preservation activities is necessary to protect and preserve these areas for everyone.

- (c) The Council further finds it necessary to adopt reasonable regulations on expressive activity to address the competing interests and uses of public property, including parks, plazas, sidewalks and high-traffic areas, with the City's need to preserve public health and safety, and to preserve access to and enjoyment of public property.
- (d) It is the purpose of this Division to adopt regulations for persons engaged in expressive activity to protect public health and safety, preserve historic and cultural opportunities, and prevent altercations arising from competing uses of space in parks, plazas, sidewalks, and high-traffic areas. This Division does not apply to sidewalk vendors.

§63.0502 **Definitions**

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Above-ground structure means any structure affixed to a *sidewalk* or other walkway owned, maintained, or authorized by the City, including a street light, tree well, parking meter, utility structure, utility box, bike rack, scooter corral, mailbox, trash can, elevator, kiosk, newspaper rack, picnic shelter, bench, table, wall, sign pole, traffic signal pole, signal push button pole, and stairs.

Expressive activity means all forms of speech and expressive conduct, including (1) the distribution of non-commercial information; (2) solicitation of funds, donations, subscriptions, or signatures for a charity, religious organization, non-profit organization, or government entity; (3) performances; and (4) the sale of artwork, recordings of performances, or other items that are inherently communicative in nature and have only nominal value or purpose apart from its communication. Items that are inherently communicative in nature include newspapers, leaflets, pamphlets, bumper stickers, buttons, books, audio, video, compact discs, video discs, records, *visual art* sold by the artist, including prints of the artist's *visual art*, political campaigning activity such as distribution of campaign signs, stickers, or other campaign materials, face painting, and painting henna tattoos. *Expressive activity* does not include the sale of food; the sale or creation of *handcrafts*, skin care and beauty products; the sale of natural found items, such as stones and gems; the provision of personal services, such as massage or hair styling; the application of substances or *handcrafts* to others such

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as piercings or skin care products; teaching yoga or exercise classes; or the creation or sale of mass-produced merchandise or *visual art*.

Expressive activity area means areas within *parks, plazas, and high-traffic areas* designated by the City Manager pursuant to section 65.0504 of this Code.

Handcrafts means objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, welding, or beading, including necklaces, earrings, bracelets, rings, and other jewelry used or intended for personal adornment, pottery, silver or metal work, leather goods, and trinkets. *Handcrafts* are objects not likely to communicate a message, idea, or concept to others, are often mass-produced or produced with limited variation, and often have functional utility apart from any communicative value they might have.

High-traffic areas means the following bike and shared-use paths: Bayside Walk; Bayshore Bikeway; Coast Boulevard Boardwalk between Jenner Street and Cuvier Street, including popouts; Crown Point Bike Path; La Jolla Shores Boardwalk; Liberty Station NTC Path; Mission Bay Bike Path; MLK Promenade; Ocean Boulevard Bike Path; Ocean Beach Bike Path; Ocean Front Walk; San Diego River Bike Path; Scripps Park Boardwalk, which runs along the perimeter of Ellen Browning Scripps Park; and the following sidewalks: Columbia Street; Kettner Boulevard; India Street between Ash Street and West Kalmia Street; and San Diego Avenue between Conde Street and Twiggs Street.

Park has the same meaning as in San Diego Municipal Code section 63.0102.

Plaza has the same meaning as in San Diego Municipal Code section 36.0102.

Services has the same meaning as in San Diego Municipal Code section 36.0102.

Sidewalk has the same meaning as in San Diego Municipal Code section 36.0102.

Visual art means sculptures, drawings, or paintings applied to paper, cardboard, canvas, or other similar or equivalent medium through the use of brush, pastel, crayon, pencil, stylus, or other object.

§63.0503 **Expressive Activity Generally**

- (a) Applicability. This Division applies to persons engaged in expressive activity alone or in small groups. It does not apply to spontaneous expressive activity by large groups, such as parades and protests, or to permitted events.
- (b) Any person engaged in expressive activity shall not:
 - (1) occupy a space greater than eight feet in length or four feet in width, including any equipment or display, unless the person is in an expressive activity area where a larger space has been set aside for expressive activity by the City Manager;
 - (2) display any merchandise for sale on the ground or on any above-ground structure;
 - (3) conduct expressive activity in a way that blocks the safe flow of pedestrians or other traffic or that blocks designated emergency ingress or egress routes, including blocking the sidewalk in a manner that reduces the useable sidewalk area to less than 48 inches; or

- (4) attach any equipment, display, or merchandise to any utility pole, street sign, bus stop, trash can, traffic pole, or other public structure.
- (c) All persons engaged in *expressive activity* using amplification or non-amplified sound-making devices, such as speakers, microphones, or public address systems, shall comply with section 59.5.0502(f) of this Code at all times, unless the person is in an *expressive activity area* where louder amplification has been authorized for *expressive activity* by the City Manager.

§63.0504 **Expressive Activity Areas**

- (a) The City Manager may designate *expressive activity areas* that shall be available, on a first-come, first-served basis, to persons who desire to use equipment, including a table, easel, stand, chair, umbrella, sunshade, or other furniture as part of their *expressive activity*. *Expressive activity areas* may be established within a *park, plaza, or other high-traffic area* when the City Manager determines one or more of the following is true:
- (1) there is a substantial interest in designating *expressive activity areas* to provide for safe ingress and egress of people and emergency and public safety vehicles and personnel based on the existing paths of travel and emergency and public safety access routes within a specific area of the *park, plaza, or high-traffic area*;

- (2) the capacity of the *park, plaza, or high-traffic area* and the daily visitation rates are likely to create significant congestion on roads and walkways such that paths of travel are likely to be impassable or unsafe;
- (3) the natural or developed landscape could be damaged as a result of continual use for *expressive activity* if not contained to specific areas within the *park, plaza, or high-traffic area*; or
- (4) there is a substantial interest in designating *expressive activity areas* adjacent to events occurring in a *park, plaza, or high-traffic area*, including private events and special events permitted pursuant to Chapter 2, Article 2, Division 40 of this Code, when the City Manager determines *expressive activity areas* are necessary to provide for safe ingress and egress of persons and use of emergency and public safety access routes in and around the event.
- (b) If the City Manager designates *expressive activity areas* within a *park, plaza, or high-traffic area*, all persons engaged in *expressive activity* who use equipment, including a table, easel, stand, chair, umbrella, sunshade, or other furniture as part of their *expressive activity*, shall confine their activities to one of the *expressive activity areas*.

- (c) Expressive activity areas shall be used for expressive activity only. No person shall engage in sidewalk vending regulated by Chapter 3, Article 6, Division 1, or sell any food, handcraft, or mass-produced visual art that does not constitute expressive activity within an expressive activity area.
- (d) A person may only use one expressive activity area at a given time.
- (e) No person shall purchase, sell, barter, or exchange any space within an expressive activity area with another person or reserve or hold space within an expressive activity area for another person.
- (f) Any person who fails to comply with this section 63.0504 may be asked to leave the expressive activity area and may be subject to the penalties and fines in section 63.0506.

§63.0505 Services and Sales of Handcrafts and Mass-Produced Visual Art

Vendors of handcrafts or mass-produced visual art and vendors of services shall comply with the Sidewalk Vending Regulations in Chapter 3, Article 6, Division 1, for all vending activities in parks, plazas, beach areas, and on sidewalks that are not otherwise authorized by a special event permit, lease, or other advance written approval by the City Manager.

§63.0506 Penalties and Fines

- (a) Any violation of this Division shall be subject to the following:
 - (1) an administrative citation and \$100 penalty for a first violation.
 - (2) an administrative citation and \$200 penalty for a second violation within one year of the first violation.

(O-2024-73)
(COR. COPY 2)

- (3) an administrative citation and \$500 penalty for a third and each subsequent violation within one year of the first violation.
- (b) Administrative citations may be appealed pursuant to Chapter 1, Article 2, Division 5 of this Code and all appeals shall be conducted in accordance with Chapter 1, Article 2, Division 4.
- (1) In addition to the powers conferred upon the enforcement hearing officer under section 12.0407 of this Code, such officer shall take into consideration the person's ability to pay the fine upon their request. If the enforcement hearing officer finds the person meets the criteria described in California Government Code section 68632(a) or (b), or any successor section, the enforcement hearing officer shall order the City to accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this Division.
- (2) The enforcement hearing officer shall have the authority to allow the person to complete community service in lieu of paying the total administrative fine.

HMF:sc:cm
02/08/2024
02/12/2024 COR. COPY
03/15/2024 COR. COPY 2
Or.Dept: Council District 2
Doc. No.: 3560059_2

Passed by the Council of The City of San Diego on FEB 27 2024, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|---------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| Joe LaCava | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Jennifer Campbell | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Stephen Whitburn | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| District 4 - vacant | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Marni von Wilpert | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Kent Lee | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Raul A. Campillo | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Vivian Moreno | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sean Elo-Rivera | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage FEB 28 2024.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Linda Irwin, Deputy
For Connie Patterson

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

FEB 13 2024, and on FEB 28 2024.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Linda Irwin, Deputy
For Connie Patterson

Office of the City Clerk, San Diego, California

Ordinance Number O- 21775

EXHIBIT B

(3-2024)

Article 3: Public Parks, Playgrounds, Beaches, Tidelands and Other Property

Division 5: Expressive Activity on Public Property
(“Expressive Activity on Public Property” added 2-28-2024
by O-21775 N.S.; effective 3-29-2024.)

§63.0501 Findings and Purpose

- (a) The Council finds the City is committed to protecting and preserving the rights of persons engaged in *expressive activity* on public property, as protected by the First Amendment to the United States Constitution and by the California Constitution. *City parks, plazas, and sidewalks* have served as a traditional forum for performances, visual artists, and other *expressive activity*. Unregulated *expressive activity* has led to challenges for first responders to access emergency situations, has intensified competing interests in available space, and has increased the incidents of physical altercations among *sidewalk vendors* and persons engaged in *expressive activity*. Unregulated *expressive activity* has also limited the accessibility of common walkways and the safe flow of pedestrian and other traffic in some areas.
- (b) The Council further finds that certain *parks, plazas, and high-traffic areas* constitute major tourist attractions, host significant numbers of people annually, and contain limited geographic space. Visitors, tourists, *sidewalk vendors*, and people engaged in *expressive activity* compete for space in these locations. The Council finds that authorizing the City Manager to designate areas for persons engaged in *expressive activity* using equipment or furniture in certain *parks, plazas, and high-traffic areas* will reduce tensions and physical altercations associated with competing for limited space, and will ensure those engaged in *expressive activity* are able to engage their intended audiences without having to compete with commercial vendors. Additionally, the ability to designate *expressive activity areas* in certain *parks, plazas, and high traffic areas* where daily visitation is significant and where the proliferation of commercial activity potentially interferes with historic and cultural opportunities and preservation activities is necessary to protect and preserve these areas for everyone.
- (c) The Council further finds it necessary to adopt reasonable regulations on *expressive activity* to address the competing interests and uses of public property, including *parks, plazas, sidewalks and high-traffic areas*, with the City’s need to preserve public health and safety, and to preserve access to and enjoyment of public property.

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- (d) It is the purpose of this Division to adopt regulations for persons engaged in *expressive activity* to protect public health and safety, preserve historic and cultural opportunities, and prevent altercations arising from competing uses of space in *parks, plazas, sidewalks, and high-traffic areas*. This Division does not apply to *sidewalk vendors*.

(“Finding and Purpose” added 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

§63.0502 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Above-ground structure means any structure affixed to a *sidewalk* or other walkway owned, maintained, or authorized by the City, including a street light, tree well, parking meter, utility structure, utility box, bike rack, scooter corral, mailbox, trash can, elevator, kiosk, newspaper rack, picnic shelter, bench, table, wall, sign pole, traffic signal pole, signal push button pole, and stairs.

Expressive activity means all forms of speech and expressive conduct, including (1) the distribution of non-commercial information; (2) solicitation of funds, donations, subscriptions, or signatures for a charity, religious organization, non-profit organization, or government entity; (3) performances; and (4) the sale of artwork, recordings of performances, or other items that are inherently communicative in nature and have only nominal value or purpose apart from its communication. Items that are inherently communicative in nature include newspapers, leaflets, pamphlets, bumper stickers, buttons, books, audio, video, compact discs, video discs, records, *visual art* sold by the artist, including prints of the artist’s *visual art*, political campaigning activity such as distribution of campaign signs, stickers, or other campaign materials, face painting, and painting henna tattoos. *Expressive activity* does not include: the sale of food; the sale or creation of *handcrafts*, skin care and beauty products; the sale of natural found items, such as stones and gems; the provision of personal services, such as massage or hair styling; the application of substances or *handcrafts* to others such as piercings or skin care products; teaching yoga or exercise classes; or the creation or sale of mass-produced merchandise or *visual art*.

Expressive activity area means areas within *parks, plazas, and high-traffic areas* designated by the City Manager pursuant to section 65.0504 of this Code.

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Handcrafts means objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, welding, or beading, including necklaces, earrings, bracelets, rings, and other jewelry used or intended for personal adornment, pottery, silver or metal work, leather goods, and trinkets. *Handcrafts* are objects not likely to communicate a message, idea, or concept to others, are often mass-produced or produced with limited variation, and often have functional utility apart from any communicative value they might have.

High-traffic areas means the following bike and shared-use paths: Bayside Walk; Bayshore Bikeway; Coast Boulevard Boardwalk between Jenner Street and Cuvier Street, including popouts; Crown Point Bike Path; La Jolla Shores Boardwalk; Liberty Station NTC Path; Mission Bay Bike Path; MLK Promenade; Ocean Boulevard Bike Path; Ocean Beach Bike Path; Ocean Front Walk; San Diego River Bike Path; Scripps Park Boardwalk, which runs along the perimeter of Ellen Browning Scripps Park; and the following sidewalks: Columbia Street; Kettner Boulevard; India Street between Ash Street and West Kalmia Street; and San Diego Avenue between Conde Street and Twiggs Street.

Park has the same meaning as in San Diego Municipal Code section 63.0102.

Plaza has the same meaning as in San Diego Municipal Code section 36.0102.

Services has the same meaning as in San Diego Municipal Code section 36.0102.

Sidewalk has the same meaning as in San Diego Municipal Code section 36.0102.

Visual art means sculptures, drawings, or paintings applied to paper, cardboard, canvas, or other similar or equivalent medium through the use of brush, pastel, crayon, pencil, stylus, or other object.

(“Definitions” added 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

§63.0503 Expressive Activity Generally

- (a) Applicability. This Division applies to persons engaged in *expressive activity* alone or in small groups. It does not apply to spontaneous *expressive activity* by large groups, such as parades and protests, or to permitted events.
- (b) Any person engaged in *expressive activity* shall not:
 - (1) occupy a space greater than eight feet in length or four feet in width, including any equipment or display, unless the person is in an *expressive activity area* where a larger space has been set aside for *expressive activity* by the City Manager;

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- (2) display any merchandise for sale on the ground or on any *above-ground structure*;
 - (3) conduct *expressive activity* in a way that blocks the safe flow of pedestrians or other traffic or that blocks designated emergency ingress or egress routes, including blocking the *sidewalk* in a manner that reduces the useable *sidewalk* area to less than 48 inches; or
 - (4) attach any equipment, display, or merchandise to any utility pole, street sign, bus stop, trash can, traffic pole, or other public structure.
- (c) All persons engaged in *expressive activity* using amplification or non-amplified sound-making devices, such as speakers, microphones, or public address systems, shall comply with section 59.5.0502(f) of this Code at all times, unless the person is in an *expressive activity area* where louder amplification has been authorized for *expressive activity* by the City Manager.

(“*Expressive Activity Generally*” added 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

§63.0504 Expressive Activity Areas

- (a) The City Manager may designate *expressive activity areas* that shall be available, on a first-come, first-served basis, to persons who desire to use equipment, including a table, easel, stand, chair, umbrella, sunshade, or other furniture as part of their *expressive activity*. *Expressive activity areas* may be established within a *park, plaza, or other high-traffic area* when the City Manager determines one or more of the following is true:
- (1) there is a substantial interest in designating *expressive activity areas* to provide for safe ingress and egress of people and emergency and public safety vehicles and personnel based on the existing paths of travel and emergency and public safety access routes within a specific area of the *park, plaza, or high-traffic area*;
 - (2) the capacity of the *park, plaza, or high-traffic area* and the daily visitation rates are likely to create significant congestion on roads and walkways such that paths of travel are likely to be impassable or unsafe;
 - (3) the natural or developed landscape could be damaged as a result of continual use for *expressive activity* if not contained to specific areas within the *park, plaza, or high-traffic area*; or

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- (4) there is a substantial interest in designating *expressive activity areas* adjacent to events occurring in a *park, plaza, or high-traffic area*, including private events and special events permitted pursuant to Chapter 2, Article 2, Division 40 of this Code, when the City Manager determines *expressive activity areas* are necessary to provide for safe ingress and egress of persons and use of emergency and public safety access routes in and around the event.
- (b) If the City Manager designates *expressive activity areas* within a *park, plaza, or high-traffic area*, all persons engaged in *expressive activity* who use equipment, including a table, easel, stand, chair, umbrella, sunshade, or other furniture as part of their *expressive activity*, shall confine their activities to one of the *expressive activity areas*.
- (c) *Expressive activity areas* shall be used for *expressive activity* only. No person shall engage in sidewalk vending regulated by Chapter 3, Article 6, Division 1, or sell any food, *handcraft*, or mass-produced *visual art* that does not constitute *expressive activity* within an *expressive activity area*.
- (d) A person may only use one *expressive activity area* at a given time.
- (e) No person shall purchase, sell, barter, or exchange any space within an *expressive activity area* with another person or reserve or hold space within an *expressive activity area* for another person.
- (f) Any person who fails to comply with this section 63.0504 may be asked to leave the *expressive activity area* and may be subject to the penalties and fines in section 63.0506.

(“*Expressive Activity Areas*” added 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

§63.0505 Services and Sales of Handcrafts and Mass-Produced Visual Art

Vendors of *handcrafts* or mass-produced *visual art* and vendors of *services* shall comply with the Sidewalk Vending Regulations in Chapter 3, Article 6, Division 1, for all vending activities in *parks, plazas, beach areas*, and on *sidewalks* that are not otherwise authorized by a special event permit, lease, or other advance written approval by the City Manager.

(“*Services and Sales of Handcrafts and Mass-Produced Visual Art*” added 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

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§63.0506 Penalties and Fines

- (a) Any violation of this Division shall be subject to the following:
 - (1) an administrative citation and \$100 penalty for a first violation.
 - (2) an administrative citation and \$200 penalty for a second violation within one year of the first violation.
 - (3) an administrative citation and \$500 penalty for a third and each subsequent violation within one year of the first violation.
- (b) Administrative citations may be appealed pursuant to Chapter 1, Article 2, Division 5 of this Code and all appeals shall be conducted in accordance with Chapter 1, Article 2, Division 4.
 - (1) In addition to the powers conferred upon the enforcement hearing officer under section 12.0407 of this Code, such officer shall take into consideration the person's ability to pay the fine upon their request. If the enforcement hearing officer finds the person meets the criteria described in California Government Code section 68632(a) or (b), or any successor section, the enforcement hearing officer shall order the City to accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this Division.
 - (2) The enforcement hearing officer shall have the authority to allow the person to complete community service in lieu of paying the total administrative fine.

("Penalties and Fines" added 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

EXHIBIT C

(6-2024)

Article 6: Sidewalk Vending

(“Sidewalk Vending” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

Division 1: Sidewalk Vending

(“Sidewalk Vending” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

§36.0101 Title and Purpose

- (a) Title. This Division shall be known as the Sidewalk Vending Regulations.
- (b) Purpose and Intent. It is the purpose and intent of this Division to provide for the regulation of sidewalk vendors on public property pursuant to California Government Code sections 51036 through 51039. The Council finds and declares that these regulations are directly related to objective health, safety, and welfare concerns created by competing uses of sidewalks by residents, visitors, and sidewalk vendors. The Council further finds and declares that regulations on sidewalk vending in City parks and beach areas are necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities and are necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the parks and beach areas.

*(“Title” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)
(Retitled from “Title” to “Title and Purpose” and amended 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)*

§36.0102 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply:

Above-ground structure means any structure affixed to a *sidewalk*, including a street light, tree well, parking meter, utility structure, utility box, bike rack, scooter corral, mailbox, trash can, elevator, kiosk, newspaper rack, picnic shelter, bench, table, wall, sign pole, traffic signal pole, signal pushbutton pole, and stairs.

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

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

Beach area has the same meaning as in section 63.20 of this Code.

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

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

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

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

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

Expressive Activity has the same meaning as in section 63.0502 of this Code.

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

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

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

High-traffic bike and shared use path means Bayside Walk; Bayshore Bikeway; Coast Boulevard Boardwalk between Jenner Street and Cuvier Street, including popouts; Ocean Front Walk; Crown Point Bike Path; La Jolla Shores Boardwalk; Liberty Station NTC Path; Mission Bay Bike Path; MLK Promenade; Ocean Boulevard Bike Path; Ocean Beach Bike Path; San Diego River Bike Path; and, Scripps Park Boardwalk, which runs along the perimeter of Ellen Browning Scripps Park.

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

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

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

Park has the same meaning as in section 63.0102(b) of this Code.

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

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

Plaza means a public square or other large urban open space typically 1,000 square feet or greater in size under the control of the City's Parks and Recreation Department and designated as a City plaza, which is primarily intended to allow the public to congregate to enjoy surrounding public amenities, such as fountains, benches, tables, landscaping, or historical structures.

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

Public right-of-way means a public easement for streets, alleys, or other uses, other than a *sidewalk*.

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

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

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

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Services are activities involving the performance of work for others or the provision of intangible items directly to a person or to a group of people at the same time that cannot be returned once they are provided. Examples include hair styling, massage, yoga, exercise classes, and dog training.

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

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

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

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

Vend or *vending* means with respect to any *goods* or *services*, to sell, offer to sell, expose or display for sale, solicit offers to purchase, barter, or require someone to negotiate, establish, or pay a fee before providing *goods* or *services*, even if characterized as a donation, on a public street, alley, highway, parking lot, *sidewalk*, or *public right-of-way*.

Vending equipment means any *conveyance*, table, stand, display, showcase, rack, or any other free-standing equipment used for *vending* on the *sidewalk*.

Vending permit means a written City of San Diego approval required prior to *vending*.

(“Definitions” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)
(Amended 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

§36.0103 Vending Permit Requirement

- (a) No *vending* shall take place except in accordance with the provisions of this Division or when otherwise authorized by the City.
- (b) All *sidewalk vendors* shall obtain a *vending permit* prior to *vending* on any *sidewalk*. Permits shall be issued by the City Manager or designee, unless otherwise specified in the Code.

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- (c) A *vending permit* shall be valid for one year from the date of issuance and must be renewed annually. A *vending permit* may only be issued to an individual at least eighteen years of age. Any sale, assignment, or transfer of the *vending permit* is prohibited. A *vending permit* that is sold, assigned, or transferred is void.
- (d) To obtain a *vending permit*, a *sidewalk vendor* must submit the following information on a permit application form provided by the City:
 - (1) the name, address and telephone number of the *sidewalk vendor*;
 - (2) proof of valid, government-issued photo identification;
 - (3) the name and business address of the company, partnership, or corporation if the *sidewalk vendor* is an agent of a company, partnership, or corporation;
 - (4) a current valid *business tax certificate* issued to the *sidewalk vendor*, or if the *sidewalk vendor* is an employee, a current valid *business tax certificate* for the business employing the *sidewalk vendor* along with proof of employment, such as a current pay stub. With the submission of a complete *vending permit* application, a *vending permit* may be issued with the submission of a complete *business tax certificate* application, which may be submitted concurrently with, or prior to, the *vending permit* application;
 - (5) proof of a California Department of Tax and Fee Administration seller's permit applicable to the *sidewalk vendor* to the extent required by law that notes the City of San Diego as a location or sub-location, which is valid for the duration of the *vending permit*;
 - (6) for those *sidewalk vendors* selling food, proof of both:
 - (A) a valid San Diego County Environmental Health Permit applicable to the *vending equipment* to be used for food preparation and storage to the extent required by law; and
 - (B) either a Manager's Food Safety Certificate or a San Diego County Food Handlers Card applicable to the *sidewalk vendor* to the extent required by law;
 - (7) a certification by the *sidewalk vendor* that to the *sidewalk vendor's* knowledge and belief, the information contained on the form is true; and

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- (8) such other information as the City Manager deems reasonably necessary to administer this Division.
- (e) Each *vending permit* application shall be accompanied by a non-refundable permit fee and a signed waiver of release and indemnification consistent with section 36.0103(g).
- (f) Each individual who intends to *vend* on a *sidewalk* must complete an application even if the individual:
 - (1) is employed or engaged by another individual or a business; or
 - (2) will use *vending equipment* owned by another individual or a business.
- (g) Release and Indemnification Requirements
 - (1) If the City issues a *vending permit*, as a condition of such permit issuance, *permittee* agrees to waive and release the City and its officers, agents, employees, contractors, and volunteers from and against any and all claims, costs, liabilities, expenses, or judgments including attorney fees and court costs arising out of any *vending* activities or any illness or injury resulting therefrom, and shall agree to indemnify and hold harmless the City, its officers, agents, employees, contractors, and volunteers from and against any and all such claims, whether caused by negligence or otherwise, except for illness and injury resulting directly from gross negligence or willful misconduct on the part of the City, its officers, agents, employees, contractors and volunteers.
 - (2) If the City issues a *vending permit*, as a condition of such *vending permit* issuance, *permittee* shall acknowledge that the use of any *sidewalk* is at the *sidewalk vendor's* own risk and the City will not take any steps to ensure any *sidewalk* is safe or conducive to the *vending* activities.
- (h) A *permittee* must immediately notify the City in writing of any changes to the facts provided in a *vending permit* application after the issuance of a *vending permit*.

(“*Vending Permit Requirement*” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

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§36.0104 Permit Denial and Revocation

- (a) A *vending permit* application shall be denied if the applicant had a prior *vending permit* revoked within the past 36 calendar months. A *vending permit* application may also be denied or a *vending permit* may be revoked or not renewed for any of the following reasons:
 - (1) provision of false statements, information, or facts by the *sidewalk vendor* in a *vending permit* application;
 - (2) failure of the *sidewalk vendor* to notify the City Manager within fifteen calendar days of any changes to the facts provided in a *vending permit* application after the issuance of a *vending permit*;
 - (3) repeated failure of the *sidewalk vendor* to comply with the regulations in this Division;
 - (4) violations of other local, state, or federal laws while operating as a *sidewalk vendor*; or
 - (5) the use of any *vending equipment* in a manner that endangers public health or safety.
- (b) If the application is for the renewal of a *vending permit*, the *sidewalk vendor* must pay all outstanding administrative fines and complete any other alternative disposition associated in any way with a previous violation of this Division before a *vending permit* will be renewed.
- (c) Notice of Revocation of a *vending permit* with any and all specific grounds for revocation shall be served in writing no less than 30 calendar days before revocation to the address listed on the initial application or to any subsequent address provided to the City by the *permittee*.
- (d) Any *sidewalk vendor* whose application for a *vending permit* is denied or whose *vending permit* is revoked may appeal such decision to the City Manager by filing a written notice of appeal with the City Manager or his designee within 10 calendar days after receipt of the notice of denial or revocation. The appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedure set forth in Chapter 1, Article 2, Division 4 of this Code.

(“Permit Denial and Revocation” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

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§36.0105 Sidewalk Vending Generally

- (a) *Sidewalk vendors* shall visibly display their *sidewalk vending permit* at all times when *vending*, including any photo identification issued by the City.
- (b) *Vending* activities on *residential* blocks may occur only between the hours of 7:00 a.m. and sunset.
- (c) *Vending* activities on *non-residential* blocks may occur only between the hours of 6:00 a.m. and 10:00 p.m. or the hours of operation imposed on other businesses on the same block, whichever is least restrictive.
- (d) A *vending permit* does not provide an exclusive right to operate on any *sidewalk* or portion thereof.
- (e) *Sidewalk vendors* shall comply with all applicable laws relating to the employment of minors. Any minor assisting with or engaged in *vending* shall be accompanied by a *sidewalk vendor* with a valid *vending permit*. Any and all actions of the minor related to *vending*, including any violations committed by the minor, are attributable to the *sidewalk vendor*.
- (f) Only *roaming sidewalk vendors* may operate in *residential* areas.
- (g) *Sidewalk vendors* are responsible for ensuring that the 10-foot area immediately surrounding the *vending* space is kept clean and free of trash and debris associated with their *vending* operation.
 - (1) All *sidewalk vendors* shall provide a trash receptacle for customers and shall ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash so that public trash receptacles located on any block for use by the general public do not have to be used by customers.
 - (2) *Sidewalk vendors* shall not dispose of customer or *sidewalk vendor* trash in trash receptacles that the City provides for public use.
- (h) Sidewalk vendors engaged in the vending of food or beverages shall display a valid San Diego County Environmental Health Permit and have hand sanitizer located in a conspicuous location readily available for use by customers.
- (i) *Sidewalk vendors* shall not display any *goods* for sale on the ground or on any *above-ground structure*.

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- (j) No *vendor* shall *vend* to any person traveling in a motor vehicle along a public roadway. *Vending* in or from a parked vehicle is addressed in section 54.0122.
- (k) *Sidewalk vendors* shall not leave *vending equipment* or *goods* unattended at any time.
- (l) *Sidewalk vendors* shall not connect to an external source of power, water, or any other utilities located on public property.
- (m) To maintain accessibility standards, *sidewalk vendors* shall not place or allow any obstruction to be placed on the *sidewalk* that would reduce the width of the *sidewalk* to less than 48 inches excluding the curb, except for the brief duration of time for a *roaming sidewalk vendor* to conduct a sale. Notwithstanding the foregoing, *sidewalk vendors* shall immediately move to provide access to the *sidewalk* to avoid impeding the flow of pedestrian or other traffic.
- (n) No *stationary sidewalk vendor* is permitted on a *sidewalk* less than six feet in width.
- (o) *Sidewalk vendors* shall not engage in or offer to engage in any type of rental activity, including the rental of any *goods* or *services*.
- (p) *Sidewalk vendors* shall display only *goods* that are available for immediate on-site sale.
- (q) *Sidewalk vendors* shall not display any signs advertising any off-site business.
- (r) *Sidewalk vendors* who *vend* any food, beverage, or liquid product must implement the following *best management practices*:
 - (1) possess spill kits that are comprised of paper towels, cloth towels, cat litter, or sand at all times while *vending*;
 - (2) remove all spill materials from the *public right-of-way* and *sidewalks* once the spilled material is absorbed off the ground;
 - (3) capture and prevent spills leaving the area and moving into the surrounding streets from entering the storm water conveyance system, including curbs, gutters, and storm drains;

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- (4) properly dispose of grease, either by hiring and utilizing an on-site grease collector or collection system, or at an acceptable facility; and
 - (5) ensure that any water or rinse residue used for *vending* activities (e.g., cooler water, ice, food preparation water) is not disposed in the curbs, gutters, streets, drains, or on any public property.
- (s) As it relates to the space occupied by the *sidewalk vendor* as set forth in section 36.0108(b)(2), *sidewalk vendors* may not use more than five square feet or 25 percent of the *vending* space, whichever is less, for items not directly related to *vending* operations.
- (t) *Vending* that substantially and adversely affects the health, safety, or welfare of any individual is prohibited.
- (u) *Sidewalk vendors* shall not leave *vending equipment* on a *sidewalk* or *public right-of-way* when not *vending* or in the immediate process of setting up or concluding *vending* activity.
 (“*Sidewalk Vending Generally*” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)
 (Amended 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

§36.0106 Vending Locations

- (a) No *stationary sidewalk vendor* shall *vend* and no *roaming sidewalk vendor* shall stop to make sales in the following locations:
- (1) in the *public right-of-way*, or any area that blocks the safe flow of pedestrians or vehicles;
 - (2) any public property that does not meet the definition of a *sidewalk*, including but not limited to any alley, beach, street, street or roadway median, or street end;
 - (3) any parking lots;
 - (4) on any slope greater than five percent or where signage indicates that wheels must be cramped to the curb;
 - (5) any location that obstructs traffic signals or regulatory signs;
 - (6) the *Ballpark District* during an event or game or within three hours before or one hour after an event or game;

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- (7) Sports Arena Boulevard between Hancock Street and East Drive during an event or game or within three hours before or one hour after an event or game at the arena;
- (8) within 18 inches from the edge of a curb;
- (9) within 5 feet in front of or 65 feet behind the *sidewalk* along a bus stop, tram or non-rail trolley stop as measured linearly along the curb from the sign marking the bus stop, tram, or non-rail trolley stop;
- (10) within 10 feet of any:
 - (A) driveway;
 - (B) marked crosswalk; or
 - (C) fire escape or emergency exit.
- (11) within 15 feet of any:
 - (A) other *sidewalk vendor*;
 - (B) intersection;
 - (C) building entrance;
 - (D) *high-traffic sidewalk*;
 - (E) *loading zone*, parking space, or access ramp designed for individuals with disabilities;
 - (F) outdoor dining or patio area;
 - (G) public restroom;
 - (H) curb ramp;
 - (I) location with a valid *encroachment permit* displayed; or
 - (J) *high-traffic bike and shared use path*.

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- (12) within 25 feet of any:
 - (A) *beach access point*; or
 - (B) pier.
 - (13) within 50 feet of any:
 - (A) railroad crossing; or
 - (B) *major transit stop*.
 - (14) within 100 feet of:
 - (A) the vehicle entrance of any fire station, police department, hospital, lifeguard station, or any other structure dedicated to health and safety emergency matters; or
 - (B) any City street or *sidewalk* closure.
 - (15) within 150 feet of Harbor Drive between Front Street and Park Boulevard during a convention or event held at the San Diego Convention Center or within three hours before or one hour after a convention or event at the Convention Center.
 - (16) within 500 feet of:
 - (A) any *permitted event*;
 - (B) any *school* while children are going to or from the *school*, during a recess period or within 30 minutes before or after the *school's* opening or closing hours; or
 - (C) the open-air baseball facility, located in East Village currently known as Petco Park, and the indoor arena located in Midway District currently known as Pechanga Arena within three hours before or one hour after an event or game.
- (b) *Stationary sidewalk vendors* shall not *vend* within 50 feet of another *stationary sidewalk vendor* in any City-designated promenade, except that City-designated promenades that are defined as *high-traffic sidewalks* shall be subject instead to the prohibition on vending under section 36.0106(a)(11)(D).

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- (c) *Stationary sidewalk vendors shall not vend within 5 feet of any above- ground structure.*
- (d) *Stationary sidewalk vendors shall not vend within 15 feet of any fire hydrant or fire lane.*
- (e) *Sidewalk vendors shall not vend on sidewalks on the following streets during the summer moratorium: Newport Avenue between Abbott Street and Sunset Cliffs Boulevard in Ocean Beach; Ventura Place between Mission Boulevard and Ocean Front Walk in Mission Beach; Garnet Avenue between Ocean Front Walk and Cass Street in Pacific Beach; and Coast Boulevard between Cave Street and the 200 block of Coast Boulevard South in La Jolla.*
- (f) *Sidewalk vendors shall not vend within the East Village District.*
- (g) *Sidewalk vendors shall not vend on any City property subject to a lease agreement so long as proper notice is provided of the prohibited location(s).*
- (h) *Sidewalk vendors shall not vend within the Gaslamp Quarter District.*

(“Vending Locations” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

§36.0107 Vending in Parks, Plazas, and Beach Areas

The following provisions apply in *parks, plazas, and beach areas*. Where the following provisions are more restrictive than those set forth in section 36.0106, *sidewalk vendors* shall comply with the more restrictive provisions:

- (a) *Sidewalk vendors shall stop vending before the designated closing time of the park, plaza, or beach area.*
- (b) *Vending is permitted between 8:00 a.m. and sunset in parks, plazas, and beach areas where there is no designated closing time.*
- (c) *Sidewalk vendors shall not vend within 50 feet of another sidewalk vendor.*
- (d) *Sidewalk vendors shall not vend within 25 feet of any decorative fountain, statue, monument, memorial, or art installation.*

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- (e) Subject to applicable law, the City Manager is authorized to enact rules and regulations to prohibit *vending* in any space that would obstruct, damage or otherwise adversely affect the public’s use and enjoyment of natural resources and recreation opportunities or contribute to an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of a *park*.
- (f) *Stationary sidewalk vendors* are not permitted within any area of a *park* or *plaza* if the *park* or *plaza* operator has signed an agreement for concessions that exclusively permits the sale of *goods* or *services* by a specified concessionaire, provided that notice by signage or other means is provided to the *stationary sidewalk vendor*.
- (g) *Vending* activities are prohibited in the following locations in Balboa Park:
 - (1) within 25 feet of: El Prado, Village Place, Pan American Road East, Pan American Road West, Pan American Plaza, Old Globe Way, Chapel Road, Spanish Village, Plaza de Panama, Plaza de California, Plaza de Balboa, War Memorial Building, the Carousel, Spreckels Organ Pavilion, Presidents Way, or any covered walkway.
 - (2) within 25 feet of the following gardens: 1935 Old Cactus Garden, Alcazar Garden, Casa del Rey Moro Garden, Desert Garden, Florida Canyon Native Plant Preserve, Inez Grant Parker Memorial Rose Garden, Marston House Garden, Palm Canyon, Trees for Health Garden, Veterans Memorial Garden, and Zoro Garden.
 - (3) within 50 feet of the Botanical Building or Lily Pond.
 - (4) within Balboa Park between December 25 and January 1.
- (h) Consistent with applicable law, the City Manager has the authority to reasonably limit the number of *sidewalk vendors* in certain *parks* by requiring *sidewalk vendors* to obtain an additional park sales permit to *vend* in the following locations: Balboa Park, Mission Bay Park, Ocean Beach Park, Mission Beach Park, Kellogg Park, Ocean Boulevard Park, Ellen Browning Scripps Park, South Mission Beach Park, and Torrey Pines City Park.
- (i) *Vending* is prohibited during the *summer moratorium* in Balboa Park, Mission Bay Park, and the Shoreline Parks, which are those parks contiguous to the shoreline or beach in the communities of Ocean Beach, Mission Beach, Pacific Beach, and La Jolla.

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- (i) *Vending* is prohibited in the following locations: Sunset Cliffs Natural Park and Mission Beach Park as defined in section 63.50 of this Code.
- (j) *Sidewalk vendors* shall not use amplified or non-amplified sound-making devices in conjunction with *vending*, such as speakers, microphones, public address systems, bells, and chimes.
(“*Vending in Public Parks, Plazas, and Beach Areas*” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)
(Retitled from “*Vending in Public Parks, Plazas, and Beach Areas*” to “*Vending in Parks, Plazas, and Beach Areas*” and amended 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

§36.0108 Sidewalk Vending Equipment and Goods

- (a) Notwithstanding any specific provisions of this Division, a *sidewalk vendor* shall not use *vending equipment* in a manner that violates any law by endangering the safety of person or property or causing a public or private nuisance.
- (b) *Sidewalk vendors* shall not:
 - (1) display *goods* less than 28 inches or more than 34 inches off the ground;
 - (2) occupy a space exceeding 24 square feet, greater than 8 feet in length, or 4 feet in width including *vending equipment*, but excluding the space the *sidewalk vendor’s* own person occupies;
 - (3) use or display any item, equipment, or structure greater than 8 feet in height or extends or overhangs more than 4 inches, unless the protrusion is located 27 inches or less, or 80 inches or more from the ground;
 - (4) use amplified sound-making devices in conjunction with *vending*, such as speakers, microphones, and public address systems; and
 - (5) set up customer seating areas.
 - (i) *Sidewalk vendors* may only have a chair for personal use.
 - (ii) *Sidewalk vendors* that do not serve food or beverages may use tables only for *vending* purposes, such as conducting transactions or displaying *goods* for sale.

- (iii) *Sidewalk vendors* that serve food or beverages must conduct all *vending* from a permitted *conveyance* in accordance with their health permit from the County Department of Environmental Health and Quality.
- (c) No *vending equipment* may be attached to or make contact with any utility pole, street sign, bus stop, trash can, traffic pole, or other public structure.
- (d) *Sidewalk vendors* shall not use:
- (1) portable generators;
 - (2) outdoor wood burning ovens or charcoal barbecues; and
 - (3) gasoline or kerosene.
- (e) *Roaming sidewalk vendors* shall not use any *portable cooking equipment*, gas-fueled appliance, or any open flame unless approved and permitted by the County Department of Environmental Health and Quality.
- (f) Notwithstanding subsection (d), *stationary sidewalk vendors* with required permits from the County Department of Environmental Health and Quality such as a Mobile Food Facilities permit may use *portable cooking equipment* authorized by such permits in compliance with the California Retail Food Code and subject to the following regulations:
- (1) While the *portable cooking equipment* is in operation:
 - (A) It must be kept at least 20 feet from any permanent structure and at least 30 feet from dry grass, grain, brush, or forested area;
 - (B) It must not be unattended; and
 - (C) The *stationary sidewalk vendor* shall not smoke or vape.
 - (2) The *stationary sidewalk vendor* must regularly clean the *portable cooking equipment* to remove grease and food buildup.
 - (3) The *stationary sidewalk vendor* shall:
 - (A) use only propane, natural gas, or butane cylinder tanks;

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- (B) use or store only propane, natural gas, or butane tanks of 20 gallons or less, with a limit of two 20-gallon tanks on a *conveyance*;
 - (C) store tanks in an upright position during use and positioned in such a way as to prevent falling, tipping, and tampering;
 - (D) disconnect all tanks while the *conveyance* is in transit or not in use;
 - (E) use only tanks with a shut-off valve and a pressure regulator, having hoses of a type approved for use by the manufacturer with the equipment; and
 - (F) test all connections to the tank for potential leaks using soap and water before each use.
- (4) Any *conveyance* that stores a tank shall have two ventilation openings on opposite sides at the cylinder valve level and at least one ventilation opening at the floor level. Each opening shall be a minimum of 10 square inches, screened with a minimum 16 mesh and shall vent to the exterior of the *conveyance*.
- (5) *Stationary sidewalk vendors* shall comply with the following fire extinguisher requirements:
- (A) Keep an easily accessible, properly charged and maintained 10 BC-rated fire extinguisher on the *conveyance* at all times and be familiar with its proper use. *Stationary sidewalk vendors* shall ensure the extinguisher has been serviced within the last year and has a valid California State Fire Marshal service tag attached;
 - (B) Mount the extinguisher securely to the *vending equipment*; and
 - (C) Locate the extinguisher away from the cooking area.
- (“*Sidewalk Vending Equipment and Goods*” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)
(Amended 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

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§36.0109 Prohibited Sales

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

(“*Prohibited Sales*” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

§36.0110 Penalties and Fines

(a) Any violation of this Division by a *sidewalk vendor* holding a valid *vending permit* shall be subject to the following:

- (1) an administrative citation and \$100 penalty for a first violation.
- (2) an administrative citation and \$200 penalty for a second violation within one year of the first violation.
- (3) an administrative citation and \$500 penalty for a third and each subsequent violation within one year of the first violation.

(b) Any *sidewalk vendor* found *vending* without a *vending permit*, if required pursuant to this Division, shall immediately cease *vending* and be subject to the following:

- (1) an administrative fine of \$250 for a first violation.
- (2) an administrative fine of \$500 for a second violation within one year of the first violation.
- (3) an administrative fine of \$1,000 for a third and each subsequent violation within one year of the first violation.

(c) If a *sidewalk vendor* who was fined for *vending* without a *vending permit* provides proof of a valid *vending permit* issued by the City that is applicable on the date of the violation, the administrative fines shall be reduced to the administrative fine schedule set forth in section 36.0110(a).

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(d) Administrative citations may be appealed pursuant to Chapter 1, Article 2, Division 5 of this Code and all appeals shall be conducted in accordance with Chapter 1, Article 2, Division 4.

(1) In addition to the powers conferred upon the enforcement hearing officer under section 12.0407 of this Code, such officer shall take into consideration the person's ability to pay the fine upon their request. If the hearing officer finds the person meets the criteria described in California Government Code section 68632(a) or (b), or any successor section, the hearing officer shall order the City to accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this Division.

(2) The hearing officer shall have the authority to allow the person to complete community service in lieu of paying the total administrative fine.

*("Penalties and Fines" added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)
(Amended 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)*

§36.0111 Impounding of Vending Equipment

(a) The City may impound *vending equipment* and any *goods* therein, for any of the following reasons:

(1) leaving *vending equipment* or *goods* unattended in violation of section 36.0105(k);

(2) *vending* prohibited *goods* in violation of section 36.0109;

(3) *vending* without a valid *vending permit* in violation of section 36.0110(b);

(4) *vending* food without a valid and displayed San Diego County Environmental Health Permit in violation of section 36.0105(h);

(5) *vending* in violation of this Division and the *sidewalk vendor* refuses or fails to provide identification upon request by an Enforcement Official;

(6) *vending* in apparent violation of this Division and the *sidewalk vendor* refuses or fails to remove the *vending equipment* from the *sidewalk*, *park*, or other property within 30 consecutive minutes after being instructed to do so by an Enforcement Official;

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- (7) *vending* in a manner that blocks or obstructs the free movement of pedestrians or other traffic on *sidewalks* and fails to maintain a minimum of 48 inches of accessible path of travel in violation of section 36.0105(m);
 - (8) *vending* in a manner that creates an imminent and substantial danger or environmental hazard to the health, safety, or general welfare of the public or the property at the location of the *vending equipment*. Examples include discharge of oil, grease, or other slippery substance without any effort to maintain best management practices; using unapproved portable cooking equipment, heating element, gas-fueled appliance, generator, or any open flame; using cooking equipment without a fire extinguisher; or *vending* during urgent or emergency public safety events or incidents; or
 - (9) *vending* by a *sidewalk vendor* who has, within a 24-month period, been issued three or more administrative citations for violations of this Division.
- (b) *Vending equipment* or *goods* that are evidence of a crime or booked as property after arrest of a *sidewalk vendor* for violation of any local, state, or federal laws or regulations, excluding this Division, may be impounded in accordance with San Diego Police Department’s applicable policies and procedures.
 - (c) The City may immediately dispose of impounded *goods* that cannot be safely stored or that are perishable.
 - (d) Any owner of impounded *vending equipment* or any *goods* may, within 10 days, request an administrative hearing before a hearing officer appointed by the City.
 - (e) The City Manager shall provide the person from whom the *goods* or *vending equipment* were taken with a receipt and instructions for retrieval of the impounded items, excluding any items that were disposed of according to section 36.0111(c). The receipt and instructions shall either be given to the person from whom the items were taken at the time of impound or shall be mailed within two business days of the impound to the address received by the City when the person applied for a *vending permit*.

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- (f) Impounded *vending equipment* and *goods*, excluding any items that were disposed of according to section 36.0111(c), will be released to the *sidewalk vendor* or owner provided that proper proof of ownership is presented, and the City receives payment in full of all administrative costs incurred as a result of the violation. Any unclaimed items will be considered abandoned and forfeited to the City after 90 days following impoundment.

(“*Impounding of Vending Equipment*” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

(Amended 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

§36.0112 Applicability

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

(“*Applicability*” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

§36.0113 Non-Applicability

The following persons, entities, or activities are exempt from the requirements of this Division:

- (a) any person engaged in *expressive activity* authorized by Chapter 6, Article 3, Division 5 of this Code;
- (b) agencies of any federal, state, or local governments;
- (c) any person engaged in commercial activity or providing *services in parks* authorized by section 63.0102(c)(14); and
- (d) any lessee or permittee of the City *vending* on City-owned property where *vending* is authorized under a City lease or permit.

(“*Non-Applicability*” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

(Amended 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

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§36.0114 [Reserved]
(Retitled from “Vending that Constitutes an Imminent and Substantial Safety or Environmental Hazard” to “[Reserved]” and amended 2-28-2024 by O-21775 N.S.; effective 3-29-2024.)

§36.0115 Entrepreneurship Zones

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

(“Entrepreneurship Zones” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

§36.0116 Reporting Requirements

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

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

(“Reporting Requirements” added 5-23-2022 by O-21459 N.S.; effective 6-22-2022.)

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EXHIBIT D

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Attorneys for Sara Duvall

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SARA DUVALL,

Plaintiff,

vs.

CITY OF SAN DIEGO,

Defendant.

Case No.: 26cv1112-AGS-BJW

Hon. Andrew G. Schopler

U.S. District Court Judge

Edward J. Schwartz

United States Courthouse

Courtroom: 5C

DECLARATION OF PLAINTIFF
SARA DUVALL IN SUPPORT OF
APPLICATION FOR A
PRELIMINARY INJUNCTION.

DECLARATION OF PLAINTIFF SARA DUVALL

1. My name is Sara Catherine Duvall.
2. I am a resident of the City of San Diego.
3. I was born in La Mesa, California (here in San Diego County).
4. I was raised in El Cajon, California (here in San Diego County).
5. I am an artist.
6. I have studied art at the college-level here in San Diego County.
7. I have over 50 college credits in art.
8. I have also taken art classes in Japan.
9. I have had my artwork shown in a gallery.
10. I have submitted my artwork to juried competitions.
11. I have won awards for my art.
12. I am part of a community of artists in San Diego who collaborate and support one another.
13. We also share our artwork in public spaces.
14. I enjoy showing my artwork in Balboa Park because I engage in fellowship with other artists there.
15. Balboa Park holds special meaning for me as a unique cultural landmark in the City I call home.
16. My first memories of going to Balboa Park are as a child with my mother.
17. I remember all the big, beautiful trees, going to museums, and of course all of the wonderful stuff at the zoo.
18. We had family picnics at the park.
19. We had birthday parties in Balboa Park.
20. We took long strolls in the park as a family.

DECLARATION OF PLAINTIFF SARA DUVALL

21. When my mom needed help at the end of her life, I took her to Balboa Park about once a week for a walk.
22. It's a nice place to be.
23. I think it's one of the best places in San Diego.
24. The sky, the trees, the trails, the birds, the squirrels, the gardens, the pond and turtles, the fountains, and all the lovely people make it so special.
25. I love setting up and showing people my art in Balboa Park.
26. I used to try and get there once a week or at least two or three times a month.
27. When showing my art in Balboa Park, I often engage in conversations with members of the public.
28. The members of the public are sometimes local San Diegans.
29. The members of the public are sometimes tourists from around the country or around the world.
30. When I'm showing my art at the park the most common thing that people ask when they walk up to my table is "Oh my God, did you make these?" and we discuss the process a little bit.
31. I often ask them if they do art, they usually say "oh, I don't have any creativity."
32. I say that's not true.
33. Everyone has creativity, sometimes you just have to find it.
34. As a San Diego native, I also enjoy talking to tourists about their travels and telling them about all the cool stuff to do at the park and in San Diego.
35. I don't mind pointing people to the restrooms either.

DECLARATION OF PLAINTIFF SARA DUVALL

36. I have been showing my artwork in Balboa Park for several years.
37. Some of my art expresses my political opinions.
38. I think it is important to publicly share my political opinions through my art because it is important to stand up for your beliefs.
39. I feel like it's everybody's responsibility to be a good citizen and to try to change things for the better.
40. I see a lot of injustice and unfairness in the world.
41. I want people to know what I think and I want to share my beliefs with others.
42. I use my art to express solidarity with oppressed communities.
43. I think one of an artist's obligations is to question everything and to help others question the world around them.
44. Politics affects everyone, and we definitely need to question our political views.
45. Public expressions of solidarity are also important because it helps marginalized people know they are not alone.
46. For example, wearing a rainbow pin shows not that you're necessarily queer or that you think that queer people are better or that you think people should be queer . . . wearing a rainbow is a signal to other queer people that you're a safe person and they're not alone.

DECLARATION OF PLAINTIFF SARA DUVALL

47. I think people buy my political art to show support for these causes and to help people be more aware of issues affecting our community.
48. Some of my art is an expression of my experience living with synesthesia.
49. My masks or depictions of the human form broken in two parts represent the different sensations I have due to synesthesia.
50. I use my art to explore my own synesthesia and hope that by creating art about it I may meet others with this neurological condition.
51. Some of my art is a statement of my perspective on the natural world.
52. Some of my artwork are designs in miniature, often less than 2” or even 1” in height.
53. I do miniature art pieces because firing a kiln takes a lot of energy and that imposes costs on our environment.
54. I enjoy making miniature decorative vases.
55. Depending on the complexity of the design and glaze, I charge anywhere from \$20-\$100 for my miniature works.
56. I feel like my tiny artwork is respectful of the environment.
57. I hope it also helps raise awareness in others about the impact of humans on the earth around us.
58. Some of my art is an exploration of design, form, and color.
59. Every piece of art I have brought to Balboa Park is an original piece made by my hand, designed and executed by me.
60. None of my art is mass produced.

DECLARATION OF PLAINTIFF SARA DUVALL

61. Every piece of art I intend to bring to Balboa Park in the future would be an original piece made by my hand, designed and executed by me.

62. Every piece of art I intend to bring to Balboa Park in the future will not be mass produced.

63. I work primarily in clay and mixed media (clay and metal).

64. My mixed media work derives from my anti-consumer, anti-waste, pro-recycle, pro-environment, pro-upcycle, pro-awareness of how humans are trashing our home environment/Earth beliefs.

65. I combine ceramic pieces that I make with found wood, metal, and glass to make many of my art pieces.

66. I find broken or outdated things, scrap, trash, and incorporate them into my art to make a statement about our impact on the world around us and how care for existing matter can be new and beautiful.

67. I have tried many kinds of art over many years: drawing, photography, watercolor, acrylic, metal work, but clay is what has become my addiction and passion.

68. I feel that I have to do my artwork in clay, I can't help it.

69. I'm attracted to the physical quality of clay, the earthiness, the touch, the feeling, the time it takes (forcing me to be present).

70. Creating art from clay is an ongoing process that requires patience and practice.

71. The first time I was ever cited and fined by the City of San Diego for showing my artwork was August 2, 2024.

72. I was fined \$250.

DECLARATION OF PLAINTIFF SARA DUVALL

73. I immediately hired an attorney and appealed this citation because I am an artist and not a “sidewalk vendor.”

74. I waited for my appeal to be heard.

75. Waiting for my appeal to be heard was stressful because I felt like I couldn’t return to Balboa Park to show my art with my artist friends because I didn’t want to be fined again and I didn’t know what would happen.

76. I wanted to understand what my rights were regarding my art and Balboa Park.

77. I didn’t understand why I was being treated differently than my artist friends and colleagues.

78. Even though I wanted to return to Balboa Park with my art, I didn’t do so because I was afraid of being cited and fined again.

79. I waited over nine months for my appeal to be heard.

80. When I got no word on my appeal for months and months, I grew impatient and finally got up the nerve to try and return to Balboa Park with my artwork.

81. But when I returned to Balboa Park with my artwork I was again cited and fined by the City of San Diego on May 9, 2025.

82. I was fined \$500.

83. I timely appealed both of these citations, explaining that I am a First Amendment protected artist and not a “sidewalk vendor.”

84. I lost both appeals and was ordered to pay the City of San Diego \$750 for not complying with the “Sidewalk Vending Regulations.”

DECLARATION OF PLAINTIFF SARA DUVALL

85. I have also been threatened by San Diego Park Rangers with having my artwork impounded if I do not comply with the rules for “sidewalk vendors.”
86. I am worried that if my artwork is impounded, it may be damaged or destroyed.
87. I no longer show my art in public forums within the City of San Diego.
88. I would love to return to Balboa Park and other public spaces to show and share my expressive artwork.
89. I would love to return to Balboa Park and other public spaces to show and share my political views through my art.
90. I am afraid to return to Balboa Park with my artwork because I do not want to receive another citation and fine from the City of San Diego.
91. I am afraid to return to Balboa Park with my artwork because I do not want my artwork to be impounded by the City of San Diego.
92. As an artist, I want to be treated as my fellow artists within the City of San Diego are treated.
93. The experience of being cited and fined for my artwork has left me feeling extremely disappointed, demoralized, exhausted, insulted, and angry.
94. I do not understand why the City of San Diego would consider my art to be protected if it were painted on a canvas but not protected because I choose clay or mixed media to express myself.

DECLARATION OF PLAINTIFF SARA DUVALL

95. The art depicted in Exhibit H is my own original art I had with me when I was cited by the City of San Diego for violating its “Sidewalk Vending Regulations” on August 2, 2024.

96. The art depicted in Exhibit J is my own original art I had with me when I was cited by the City of San Diego for violating its “Sidewalk Vending Regulations” on May 9, 2025.

97. The citations depicted in Exhibits G & I are true and accurate copies of the citations I received on August 2, 2024 and May 9, 2025 (my personally identifiable information has been removed).

98. The art depicted in Exhibits E & F is my own original art.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 14, 2026.

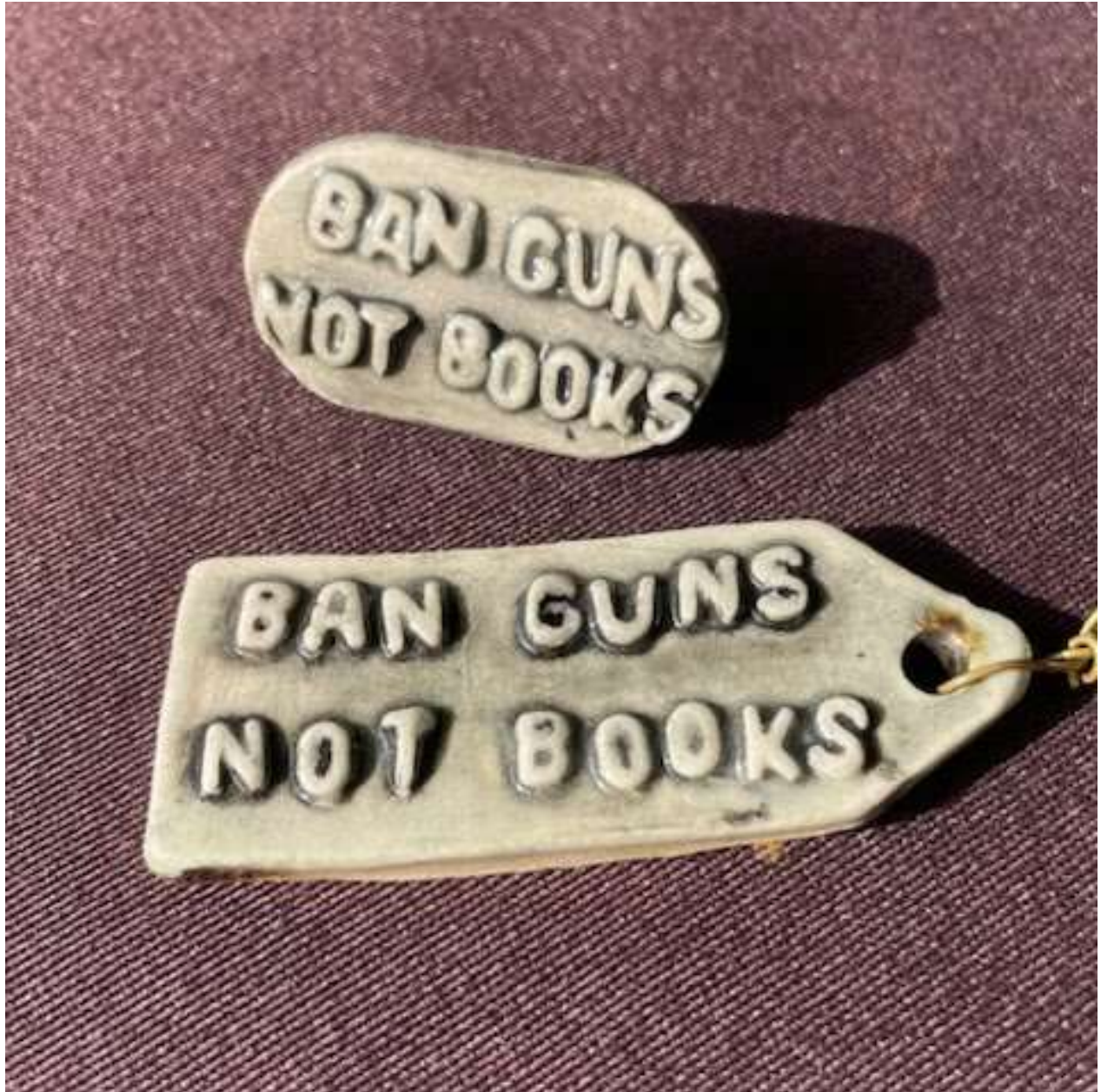


Sara Duvall (Apr 14, 2026 12:38:28 PDT)

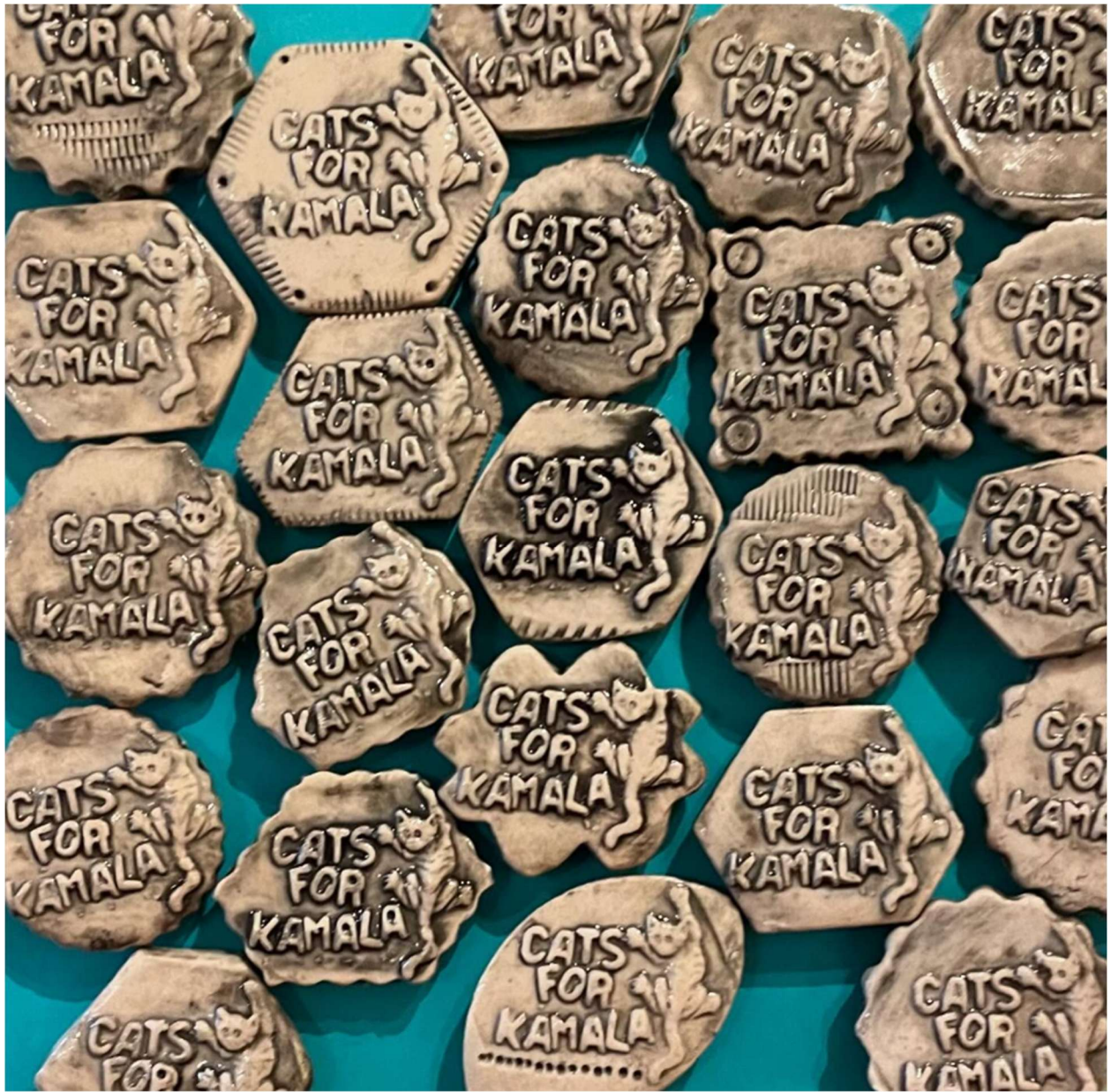
SARA CATHERINE DUVALL

DECLARATION OF PLAINTIFF SARA DUVALL

EXHIBIT E













F-101





EXHIBIT G

SVO # 250032

For information about Sidewalk Vending permits & regulations, visit sandiego.gov/sidewalk-vending

The City of **SAN DIEGO**

250032

ADMINISTRATIVE CITATION

Violation Observed

Date 08/02/24 Time 2:28 PM Fine Amount \$ 250

(see reverse side for payment instructions)

| | |
|-----------------------------------|-----------------------------|
| Responsible Person/Party Cited | <u>SARA CATHERINE DUVAL</u> |
| Drivers License/I.D. # | [REDACTED] |
| Relation to Vendor | <u>SELF</u> |
| Mailing Address, City, State, ZIP | [REDACTED] |
| Business name (if any) | <u>N/A</u> |
| Violation Address | <u>1649 EL PRADO</u> |
| SVO Permit Number | <u>NONE</u> |

OFFICER B. Yates AGY W I.D. 66

MUNI. CODE SECTION VIOLATION: VIOLATION DESCRIPTION:

- 1. SDMC 36.0103(a) VENDING OUTSIDE THE PROVISIONS OF THIS DIVISION
- 2. SDMC 36.0106(a)(11)(J) VENDING WITHIN 15FT OF A HIGH-TRAFFIC BIKE AND SHARED USE PATH
- 19. SDMC 36.0106(a)(2) VENDING ON PUBLIC PROPERTY NOT DEFINED AS A SIDEWALK
- 36. SDMC 36.0106(e) VENDING WITHIN 15 FT OF ANY FIRE LANE OR FIRE HYDRANT
- 3. SDMC 36.0107(g)(1) VENDING WITHIN 25FT OF EL PRADO IN BALBOA PARK
- 6. SDMC 36.0103(b) NO PERMIT
- 34. SDMC 36.0106(a)(16)(C) VENDING WITHIN 500 FEET OF; PETCO PARK, AND PECHANGA ARENA DURING AN EVENT OR GAME
- 22. SDMC 36.0106(a)(7) VENDING BETWEEN SPORTS ARENA BLVD. - HANCOCK ST. & EAST DR. DURING EVENT OR GAME
- 43. SDMC 36.0107(i) VENDING PROHIBITED DURING THE SUMMER MORATORIUM IN BALBOA PARK, MISSION BAY PARK, AND SHORELINE PARKS
- OTHER: SDMC
- OTHER: SDMC

EXPRESSIVE ACTIVITY ONLY

- 4. SDMC 63.0503(b)(1) OCCUPYING A SPACE GREATER THAN 8 FT LENGTH BY 4 FT WIDTH OUTSIDE OF DESIGNATED EXPRESSIVE ACTIVITY AREA

- 19. SDMC 36.0106(a)(2) VENDING ON PUBLIC PROPERTY NOT DEFINED AS A SIDEWALK
- 36. SDMC 36.0106(e) VENDING WITHIN 15 FT OF ANY FIRE LANE OR FIRE HYDRANT
- 3. SDMC 36.0107(g)(1) VENDING WITHIN 25 FT OF CL. WALK IN BALBOA PARK
- 6. SDMC 36.0103(b) NO PERMIT
- 34. SDMC 36.0106(a)(1)(C) VENDING WITHIN 500 FEET OF; PETCO PARK, AND PECHANGA ARENA DURING AN EVENT OR GAME
- 22. SDMC 36.0106(a)(7) VENDING BETWEEN SPORTS ARENA BLVD. - HANCOCK ST. & EAST DR. DURING EVENT OR GAME
- 43. SDMC 36.0107(i) VENDING PROHIBITED DURING THE SUMMER MORATORIUM IN BALBOA PARK, MISSION BAY PARK, AND SHORELINE PARKS
- OTHER: SDMC
- OTHER: SDMC

EXPRESSIVE ACTIVITY ONLY

- 4. SDMC 63.0503(b)(1) OCCUPYING A SPACE GREATER THAN 8 FT LENGTH BY 4 FT WIDTH
- 5. SDMC 63.0504(b) OUTSIDE OF DESIGNATED EXPRESSIVE ACTIVITY AREA
- OTHER: SDMC

CORRECTIONS INDICATED BELOW ARE REQUIRED **IMMEDIATELY**. IF YOU FAIL TO MAKE THE INDICATED CORRECTIONS, ANOTHER CITATION MAY BE ISSUED. OTHER ENFORCEMENT ACTION MAY RESULT IF COMPLIANCE IS NOT ACHIEVED.

CORRECTIVE ACTION REQUIRED STOP VENDING - PER
SDMC CODE

Work Phone [REDACTED]

Email:
 Parks and Recreation -
ParksRecSVOAppeals@sandiego.gov

Police Department - SVOAppeals@pd.sandiego.gov

[Signature]
Signature of City Official
[Signature]
Signature of Responsible Person

SVO # 241037

For information about Sidewalk Vending permits & regulations, visit sandiego.gov/sidewalk-vending



241037

ADMINISTRATIVE CITATION

Violation Observed

Date 5/9/2025 Time 11:23AM Fine Amount \$ 500.00

(see reverse side for payment instructions)

| | |
|-----------------------------------|------------------------------|
| Responsible Person/Party Cited | <u>SARA CATHERINE DUVALL</u> |
| Drivers License/I.D. # | [REDACTED] |
| Relation to Vendor | <u>SELF</u> |
| Mailing Address, City, State, ZIP | [REDACTED] |
| Business name (if any) | <u>N/A</u> |
| Violation Address | <u>1649 EL PRADO</u> |
| SVO Permit Number | <u>NONE</u> |

OFFICER B. YATES AGY W PARKS I.D. 66

MUNI. CODE SECTION VIOLATION: VIOLATION DESCRIPTION:

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- OTHER: SDMC
- OTHER: SDMC

EXPRESSIVE ACTIVITY ONLY

- 4. SDMC 63.0503(b)(1) OCCUPYING A SPACE GREATER THAN 8 FT LENGTH BY 4 FT WIDTH
- 5. SDMC 63.0504(b) OUTSIDE OF DESIGNATED EXPRESSIVE ACTIVITY AREA
- OTHER: SDMC



CORRECTIONS INDICATED BELOW ARE REQUIRED **IMMEDIATELY**. IF YOU FAIL TO MAKE THE INDICATED CORRECTIONS, ANOTHER CITATION MAY BE ISSUED. OTHER ENFORCEMENT ACTION MAY RESULT IF COMPLIANCE IS NOT ACHIEVED.

CORRECTIVE ACTION REQUIRED STOP VENDING PER SDMC

Work Phone [REDACTED]

Email:
 Parks and Recreation - ParksRecSVOAppeals@sanidiego.gov

Police Department - SVOAppeals@pd.sanidiego.gov


Signature of City Official

Signature of Responsible Person

WHITE - ISSUING DEPARTMENT YELLOW - RESPONSIBLE PARTY PINK - FILE COPY
READ REVERSE FOR IMPORTANT INFORMATION

EXHIBIT H



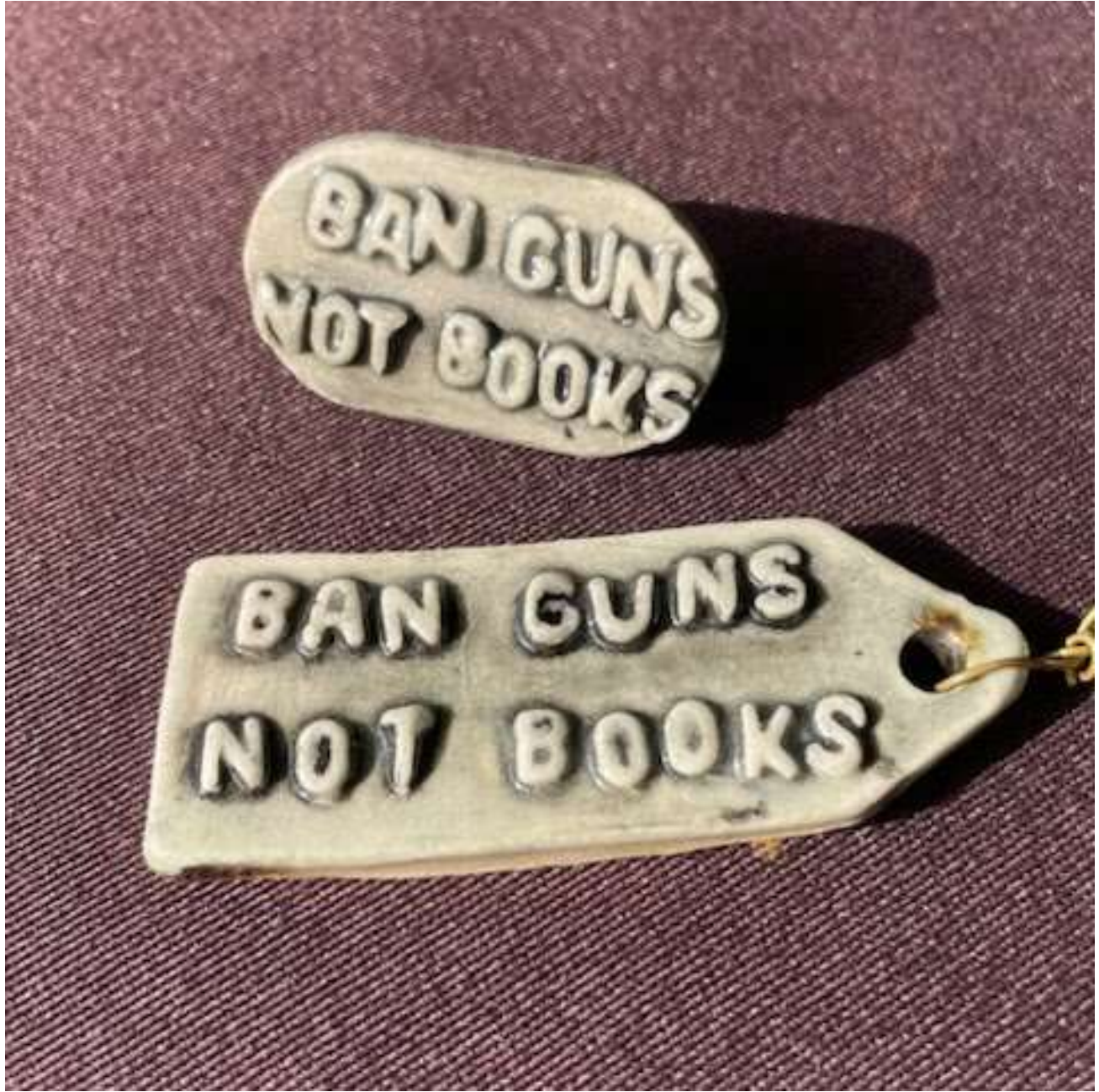






EXHIBIT I

SVO # 241037

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241037

ADMINISTRATIVE CITATION

Violation Observed

Date 5/9/2025 Time 11:23AM Fine Amount \$ 500.00

(see reverse side for payment instructions)

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|-----------------------------------|------------------------------|
| Responsible Person/Party Cited | <u>SARA CATHERINE DUVALL</u> |
| Drivers License/I.D. # | [REDACTED] |
| Relation to Vendor | <u>SELF</u> |
| Mailing Address, City, State, ZIP | [REDACTED] |
| Business name (if any) | <u>N/A</u> |
| Violation Address | <u>1649 EL PRADO</u> |
| SVO Permit Number | <u>NONE</u> |

OFFICER B. YATES AGY W PARKS I.D. 66

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EXPRESSIVE ACTIVITY ONLY

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CORRECTIVE ACTION REQUIRED STOP VENDING PER SDMC

Work Phone: [REDACTED]

- Email:
- Parks and Recreation - ParksRecSVOAppeals@san diego.gov
 - Police Department - SVOAppeals@pd.san diego.gov

[Handwritten Signature]
 Signature of City Official

[Handwritten Signature]
 Signature of Responsible Person

WHITE - ISSUING DEPARTMENT YELLOW - RESPONSIBLE PARTY PINK - FILE COPY
READ REVERSE FOR IMPORTANT INFORMATION

EXHIBIT J







