

DRAFT

ORDINANCE NO. 31183

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 6.54.215, 6.54.265, 6.54.270, AND ADDING A NEW SECTION 6.54.405, OF CHAPTER 6.54 OF TITLE 6 OF THE SAN JOSE MUNICIPAL CODE RELATED TO THE CITY OF SAN JOSE PEDDLER ORDINANCE

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General procedure and policy making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 6.54.215 of Chapter 6.54 of Title 6 of the San José Municipal Code is amended to read as follows:

6.54.215 General operating requirements.

Peddlers shall comply with the following:

A. No Peddlers shall peddle in the following locations:

1. Within 500 feet of a permitted certified farmers' market, a swap meet, or an area designated for a temporary special event permit issued pursuant to Chapter 13.14 of this Code. This prohibition shall be limited to the operating hours of the farmers' market or swap meet, or the limited duration of the temporary special event permit;
2. Within 500 feet of a public or private school site during school hours, and not within one hour before or one hour after school drop off and pick up operations;
3. Within 500 feet of: 1) the San José Arena, currently known as SAP Center at San José, on event days; 2) the stadium located on Coleman Avenue, currently known as Avaya-Paypal Park Stadium, on event days; 3) San José Municipal Stadium, currently known as Excite Ballpark Home of the San José Giants, on event days; 4) San José McEnery Convention Center on event days; and 5) any other venue as determined by the City Manager and published in the regulations promulgated pursuant to Section 6.54.265;
4. In any City-owned parking lot; or
5. On private property without the consent of the property owner.

- B. No Peddler shall conduct activities in a manner that blocks or obstructs the free movement of pedestrians or vehicles. Peddlers must at all times provide a clearance of not less than three (3) feet on all sidewalks or pedestrian areas so as to enable persons to freely pass while walking, running, or using mobility assistance devices.
- C. Peddlers shall provide a trash receptacle for customers and ensure proper disposal of customer trash. Prior to leaving any vending location, the sidewalk peddler shall pick up, remove, and dispose of all trash generated by the Peddling operations or the Peddler's customers within a fifteen (15) foot radius of the Peddling location.
- D. Peddlers of food or food products shall possess and display in plain view a valid permit from the Santa Clara County Department of Environmental Health.
- E. Peddlers shall comply with all applicable state and local laws, including without limitation state food preparation, handling, and labeling requirements; fire codes and regulations; and the Americans with Disabilities Act of 1990 and other disability access standards (both state and federal).
- F. Mobile Units shall not be chained, fastened, or affixed at any time to any building or structure, including, but not limited to lampposts, parking meters, traffic signals, fire hydrants, benches, bus shelters, trash cans, street signs, trees, bollards, or other objects within the public right-of-way. No Mobile Unit shall become a permanent fixture on any site or be considered an improvement to real property. A Mobile unit and any equipment, goods, wares, merchandise, food, products, or any other thing or representation of value associated with a mobile unit shall not be left unattended at any time. Peddlers shall not utilize any structure in the right-of-way as an extension of the mobile unit.

SECTION 2. Section 6.54.265 of Chapter 6.54 of Title 6 of the San José Municipal Code is amended to read as follows:

6.54.265 Regulations for peddler permits – City manager.

- A. Consistent with the city's Downtown Strategy 2040 and the city's general plan, the city manager is hereby authorized to make and promulgate time, place and manner regulations that are 1) directly related to objective health, safety and welfare concerns; 2) necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; or 3) necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of a park. These regulations shall be in addition to the requirements set forth in this chapter.
- B. All regulations established by the city manager shall be set forth in specific regulations for peddlers which shall be adopted by the city manager as follows:
 - 1. Any proposed regulations shall be coordinated by the city manager with the chief of police; the director for the department of transportation; the office of economic development; the director of parks, recreation, and neighborhood services; and the city attorney.
 - 2. Any proposed regulations shall be posted on the city clerk's website and made available for inspection and copying by the public at the office of the city clerk during normal business hours.
 - 3. A copy of any proposed regulations shall also be mailed to each holder of a permit or license issued under this chapter.

4. A thirty-day public comment period to receive comments on the proposed regulations shall commence on the date the notice of the proposed regulations is sent to those permitted or licensed under this chapter. During the comment period, any person may submit written comments regarding the proposed regulations to the city manager.
 5. After the close of the public comment period, the city manager shall consider all reasonable public comments on the proposed regulations.
 6. After the city manager has considered the comments, the city manager shall approve the final regulations.
 7. The regulations approved by the city manager shall be contained in regulations for peddlers which shall become final on the date notice of the regulations is sent to those permitted and licensed under this chapter or the date the regulations are posted on the city clerk's website, whichever occurs last.
 8. The notice of the regulations shall be accompanied by a brief written statement from the city manager setting forth the reasons for the regulations.
- C. Any regulations adopted by the city manager may be amended by following the procedure outlined in subsection B of this subsection.
- D. All regulations adopted by the city manager shall have the same force and effect of law.

SECTION 3. Section 6.54.270 of Chapter 6.54 of Title 6 of the San José Municipal Code is amended to read as follows.

6.54.270 Waiver and release of liability, indemnification and hold harmless, and acknowledgment of risk.

- A. If the City issues a peddler business 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 peddling 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.
- B. If the City issues a peddler business permit, as a condition of such permit issuance, permittee shall acknowledge that the use of any sidewalk is at the sidewalk permittee's own risk and the City will not take any steps to ensure any sidewalk is safe or conducive to the peddling activities.

SECTION 4. A new section 6.54.405 is added to Chapter 6.54 of Title 6 of the San José Municipal Code, to be numbered, entitled and to read as follows:

6.54.405 Mobile unit impoundment.

- A. The City may impound a mobile unit and any associated equipment and any goods therein, for any of the following reasons:
1. Peddling in areas prohibited for safety under section 6.54.215.A.

2. Blocking or obstructing the free movement of pedestrians or vehicles as defined by section 6.54.215.B or obstructing or blocking a path of egress from a building, fire connection, or fire hydrant in violation of California Fire Code and local amendments and applicable standards..
3. Peddling food or food products without a valid permit from the Santa Clara County Department of Environmental Health in violation of section 6.54.215.D.
4. Chaining, fastening, or affixing equipment to structures, utilizing any structure in the right-of-way as an extension of the mobile unit, or leaving peddling equipment or goods unattended in violation of section 6.54.215.F.
5. Peddling in apparent violation of any provision or mandatory requirement of this Chapter and refusing or failing to provide identification upon request by a City employee.
6. Peddling in apparent violation of any provision or mandatory requirement of this Chapter and refusing or failing to remove the mobile unit and any associated equipment from the sidewalk, park, or other property within 15 consecutive minutes after being instructed to do so by a City employee.
7. Peddling in a manner that creates an imminent and substantial danger or hazard to the health, safety, or general welfare of the public or the property at the location of the peddling equipment, including but not limited to, violations of California Fire Code and local amendments and applicable standards. Examples include discharge of oil, grease, or other slippery substance, using unapproved portable cooking, tent or membrane

structure equipment, peddling without a fire extinguisher or peddling during urgent or emergency public safety events or incidents.

- B. The City may immediately dispose of impounded goods that cannot be safely stored or that are perishable.
- C. The person from whom the goods or mobile unit or associated equipment were taken shall, if present, be provided instructions for retrieval of impounded items.
- D. Impounded peddling equipment and goods, excluding any items that were disposed of according to section 6.54.405.B, will be released to the sidewalk peddler or owner provided that a description of the items is presented.
- E. Unclaimed items will be considered abandoned and forfeited to the City after 90 days following impoundment.

PASSED FOR PUBLICATION of title this _____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk