

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
VARIOUS SECTIONS OF CHAPTER 6.54 OF TITLE 6 OF
THE SAN JOSE MUNICIPAL CODE (THE PEDDLER
ORDINANCE) TO CONFORM TO STATE LAW**

WHEREAS, a well-regulated peddling program would enliven the City's streetscape by creating a vibrant marketplace;

WHEREAS, because peddling has a relatively low barrier to entry, peddling encourages entrepreneurship;

WHEREAS, providing economic opportunity for people to support themselves and their families is one of the most important goals for the City;

WHEREAS, there is a need to regulate the sale of food and merchandise in the public right-of-way and in parks to protect the public's health, safety and welfare;

WHEREAS, peddling within 500 feet of concert, sport, and convention venues on event days impacts pedestrian and peddler safety due to overcrowding on sidewalks, which results in pedestrians walking in the street and along the sidewalk to keep moving forward. These venues also experience a high amount of traffic, affecting the safety of pedestrians and motorists, due to a high concentration of visitors at one time;

WHEREAS, requiring licenses and permits to peddle on sidewalks, streets, and parks benefits the health and safety of the public because it increases peddler accountability in following the City's rules and regulations by identifying peddlers out of compliance with the City's peddling program and protects peddlers assigned to vend in certain locations;

WHEREAS, regulation of peddling benefits the City as a whole as it leads to orderly commerce; and

WHEREAS, the City Council seeks to create a vending program which will provide regulation of peddlers in San José;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. A new section is added to Chapter 6.54 of Title 6 of the San José Municipal Code to be numbered, entitled and to read as follows:

6.54.025 Certified Farmers' Market

"Certified Farmers' Market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the California Food and Agricultural Code and any regulations adopted pursuant to the chapter.

SECTION 2. A new section is added to Chapter 6.54 of Title 6 of the San José Municipal Code to be numbered, entitled and to read as follows:

6.54.055 Park

"Park" shall have the definition given in Section 13.44.014 of Title 13 of this Code.

SECTION 3. A new section is added to Chapter 6.54 of Title 6 of the San José Municipal Code to be numbered, entitled and to read as follows:

6.54.098 Swap Meet

“Swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the California Business and Professions Code, and any regulations adopted pursuant to the article.

SECTION 4. Section 6.54.100 of Chapter 6.54 of Title 6 of the San José Municipal Code is amended to read as follows:

6.54.100 Peddler Categories

A. This chapter shall regulate the conduct of the following categories of peddling:

1. Pedestrian peddlers;
2. Motor vehicle-based peddlers; and
3. Mobile unit peddlers;
34. Approved location peddlers;
45. Annual or special events peddlers;
5. Arena peddlers;
6. Flower peddlers.

B. Ice cream trucks, unless otherwise specified, are regulated under Chapter 6.39 of the code.

SECTION 5. Section 6.54.205 of Chapter 6.54 of Title 6 of the San José Municipal Code is amended to read as follows:

6.54.205 Hours of Business

- A. Peddling shall only be permitted between the hours of 8:00 a.m. and 10:00 p.m., daily, except as follows:~~Unless otherwise specifically excepted in this chapter, no person shall peddle upon any street, sidewalk, right-of-way, park or other public place in the city between the hours of 7:00 p.m. or one-half hour after sunset, whichever comes first, and 10:00 a.m. of the following day.~~
1. In residential areas, Peddling shall only be permitted between the hours of 9:00 a.m. and 5:00 p.m., Pacific Standard Time, and between the hours of 9:00 a.m. and 7:00 p.m., Pacific Daylight Savings Time.
 2. In nonresidential areas, the limit on hours of operation shall not be more restrictive than the hours of operation of other businesses or uses on the same street.
 3. In Park areas, Peddling shall be permitted only during hours the Park is open to the public.
- B. The provisions of this section shall not apply to the sale of foodstuffs to employees of industrial establishments at or adjacent to such establishments, or to workers or employees at any construction job site, if the foodstuffs sold to such persons are sold for immediate consumption at such places.

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

6.54.215 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 currently known as Avaya 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 4) 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;
5. On private property without the consent of the property owner.

- B. No Peddler shall sell 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 vendor 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. Peddlers shall not utilize any structure in the right of way as an extension of the mobile unit.

SECTION 7. Section 6.54.250 of Chapter 6.54 of Title 6 of the San José Municipal Code is amended to read as follows:

6.54.250 Congestion Restrictions for ~~Motor Vehicle-Based And Mobile Unit~~ Peddlers

- A. No mobile unit peddler shall stop to peddle within twenty-five (25) feet of any other approved location peddler or mobile unit peddler that has already stopped to peddle.
- B. No motor vehicle-based ~~or mobile unit~~ peddler shall stop to peddle from a motor vehicle ~~or mobile unit~~ within two hundred (200) feet of another motor vehicle-based ~~or mobile unit~~ peddler that has already stopped to peddle.

SECTION 8. Section 6.54.260 of Chapter 6.54 of Title 6 of the San José Municipal Code is amended to read as follows:

6.54.260 Approved Location Permit Terms and Conditions

An approved location permit to peddle may be issued by the chief of police under the following terms and conditions:

- A. The person requesting an approved location permit shall comply with all the permit and license procedures set forth in Chapter 6.02.
- B. If more than one application is received at the same time for the same location not currently occupied by a permittee, the successful applicant shall be drawn by lot.

- C. Each application for an approved location permit shall be accompanied by a site plan which shall specifically detail how and where the applicant proposes to set up the mobile unit from which the applicant intends to peddle.
- D. If issued, an approved location permit shall grant only a license to use the sidewalk portion of the public street identified in the approved location permit.
- E. The chief of police shall make approved location permits subject to such other terms and conditions as the chief of police deems necessary to promote the public health, safety and welfare and to promote vehicular traffic safety and convenience and pedestrian safety and convenience.
- F. Permits shall be issued only for particular approved locations situated on the sidewalk portion of a public street.
- G. Approved location permits may be issued only for locations that are in compliance with the regulations issued by the city manager.
- H. If an approved location permit is issued for an area located within the downtown street vendors program area, the approved location permit may include an alternate approved location for the applicant to peddle from during the time when the applicant is not able to peddle from the original and primary approved location due to a downtown special event, as defined in Chapter 6.55 of this Code.
- I. If an approved location permit is issued for an area located within the downtown street vendors program area and the applicant desires to have an alternate location approved as part of his or her approved location permit, the applicant must submit with his or her application a site plan for the alternate location.

- J. No approved location permit shall be issued to a peddler peddling from a motor vehicle.
- K. No person shall peddle from, at, or in conjunction with a mobile unit, except at the approved location for which that person, or the business for which he or she is peddling, has an approved location permit issued by the chief of police.
- L. No person shall peddle from a mobile unit that exceeds the dimensions permitted under the regulations issued by the city manager.
- M. No person shall use or have any equipment or device at any approved location other than the permitted mobile unit, unless permitted under the regulations issued by the city manager.
- N. Under no circumstances shall a person with an approved location permit block the free movement of pedestrians along the sidewalk and the clearance around the mobile unit, and any equipment must meet the minimum clearance requirements under the Americans with Disabilities Act, the regulations issued by the city manager, and any other legal requirement.
- O. A person operating with an approved location permit at the approved location shall park or locate any mobile unit in such a way that the mobile unit is located directly within the area described in the permit under which he or she is peddling, and in such a way as to use as little of the sidewalk as possible.
- P. Approved location permits shall not be sold, assigned or transferred and any attempt to sell, assign or transfer, or any sale, assignment or transfer of, any approved location permit shall render the permit null and void.

- Q. An approved location permit shall cover the permittee to whom the permit is issued and any of the permittee's agents or employees that have obtained a valid peddler employee license from the chief of police.
- R. No person shall peddle from an approved location beyond the hours of operation permitted under the regulations issued by the city manager.
- S. No person peddling from an approved location shall allow any mobile unit to remain at the approved location beyond the hours of operation permitted under the regulations issued by the city manager.
- T. No person peddling from an approved location shall use, play or cause to be used or played any amplifier, loudspeaker, or any other instrument or device used for the production of sound beyond the hours of operation permitted under the regulations issued by the city manager.
- U. No person peddling from an approved location shall use, play or cause to be used or played any amplifier, loudspeaker, or any other instrument or device used for the production of sound in such a manner as to create a disturbance of the peace as that term is used in Chapter 10.16 of this Code.
- V. Approved Location Permits shall not be issued for locations that are zoned exclusively residential and no person Peddling from an Approved Location shall sell in areas that are zoned exclusively residential.
- W. Approved Location Permits shall not be issued for locations that are within any Park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire.

SECTION 9. 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 ~~Approved Location~~ Peddler Permits - City Manager

- A. Consistent with the city's Downtown Strategy 2000 and the city's general plan, the city manager is hereby authorized to make and promulgate time, place and manner regulations that are ~~reasonably necessary to promote economic growth, create a more vibrant city, and that are reasonably necessary~~ 1) directly related to ~~protect the~~objective health, safety and welfare ~~concernsef the public;~~ 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 the 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 ~~approved location~~-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 ~~approved location~~-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 10. 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 Insurance for ~~Approved Location~~ Peddlers

- A. Each permittee ~~who is an approved location peddler~~, at his or her sole cost and expense, and during the entire term of his or her permit or any renewal thereof, shall obtain and maintain in full force and effect a commercial general liability insurance policy or other such policy as the office of the risk manager shall require:
1. With minimum policy limits to be set by the risk manager;
 2. Issued by an admitted insurer or insurers as defined by the California Insurance Code; and
 3. Providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the peddler business permit, without thirty days written notice to the risk manager prior to the effective date of such cancellation or reduction in coverage;
 4. The City of San José shall be an additional named insured under the policy.

- B. Adequate proof of insurance shall be provided to the risk manager prior to the permittee and his or her agents and employees engaging in peddling ~~at an approved location.~~

SECTION 11. Section 6.54.280 of Chapter 6.54 of Title 6 of the San José Municipal Code is amended to read as follows:

6.54.280 Exemption for Annual or Special Events

- A. Peddlers shall be exempt from the provisions of this chapter when participating in an event under the following circumstances:
1. While such peddlers are participating in an event subject to a: special event permit issued pursuant to Chapter 13.14 of this Code, including, but not limited to, a parade, street closure, paseo/plaza use permit, or Park special use permit.
 - ~~a. Parade permit issued pursuant to Chapter 13.12 of the code;~~
 - ~~b. Street closure permit issued pursuant to Chapter 13.16 of the code;~~
 - ~~c. Paseo/plaza use permit issued pursuant to Chapter 13.22 of the code;~~
 - ~~d. Park entertainment or special use permit issued pursuant to Chapter 13.44 of the code.~~
 2. While such peddlers are participating in an event declared to be a downtown special event pursuant to Chapter 6.55 of the code.
- B. The sponsoring organization is authorized to choose participating peddlers, issue space permits to such peddlers, and charge a reasonable fee for such business participation.

C. The exemption shall be for the duration of the event only.

SECTION 12. Section 6.54.290 of Chapter 6.54 of Title 6 of the San José Municipal Code is hereby repealed.

6.54.290 ~~Arena Peddling - Prohibition Zone~~

~~A. The "arena peddling prohibition zone" shall be the area bounded by the following streets and portions of streets:~~

- ~~1. West San Fernando Street: the south side sidewalk of San Fernando Street from the intersection of the Peninsula Corridor Joint Powers Board Railroad right-of-way and San Fernando Street to the intersection of San Fernando Street and Almaden Boulevard.~~
- ~~2. Almaden Boulevard and North Almaden Boulevard: the east sidewalk of Almaden Boulevard from the intersection of San Fernando Street and Almaden Boulevard north to the intersection of North Almaden Boulevard and West Julian Street.~~
- ~~3. West Julian Street: the north side sidewalk of Julian Street from the intersection of North Almaden Boulevard and Julian Street to the intersection of Julian Street and the western side of the Peninsula Corridor Joint Powers Board Railroad right-of-way.~~
- ~~4. Peninsula Corridor Joint Powers Board Railroad right-of-way: the western boundary of the Peninsula Corridor Joint Powers Board Railroad right-of-way from the intersection of Julian Street and the Peninsula Corridor Joint Powers Board Railroad right-of-way to the intersection of the Peninsula Corridor Joint Powers Board Railroad right-of-way and San Fernando Street.~~

~~B. The arena peddling prohibition zone shall include all public land and public rights-of-way up to the boundaries of the zone as described in subsection A. of this section.~~

SECTION 13. Section 6.54.295 of Chapter 6.54 of Title 6 of the San José Municipal Code is hereby repealed.

6.54.295 ~~Arena Peddling – Peddling Prohibition~~

~~No person shall peddle within the designated arena peddling prohibition zone.~~

SECTION 14. A new part is added to Chapter 6.54 of Title 6 of the San José Municipal Code to be numbered, entitled and to read as follows:

Part 5
Enforcement

6.54.400 Enforcement for Approved Location and Mobile Unit Peddlers

- A. Any violation of this Chapter by an approved location peddler or a mobile unit peddler shall be punishable only by an administrative citation in accordance with the procedures set forth in Chapter 1.15 of Title 1 of this Code relating to the issuance of administrative citations, imposing of administrative fines, right to appeal, and the right to an administrative hearing.
- B. The amounts of the fines for violations imposed pursuant to this Chapter against an approved location peddler or a mobile unit peddler shall be set forth in the schedule of fines established by resolution of the city council, and in accordance with California Government Code Section 51039.
- C. Any violation of this Chapter by an approved location peddler or a mobile unit peddler shall not be punishable as an infraction or misdemeanor. No person

alleged to have violated the provisions herein shall be subject to arrest except when otherwise permitted by law.

D. Failure to pay an administrative citation issued pursuant to this Section shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized herein shall not be assessed.

E. When assessing administrative citations pursuant to this Section, the hearing officer shall take into consideration the person's ability to pay the fine. The City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

F. If the person meets the criteria described in subdivision (a) or (b) of California Government Code Section 68632, the City shall accept, in full satisfaction, twenty (20) percent of an administrative citation imposed pursuant to this r.

G. The hearing officer may allow a person to complete community service in lieu of paying the total administrative citation, may waive the administrative citation, or may offer an alternative disposition.

SECTION 15. A new section is added to Chapter 6.54 of Title 6 of the San José Municipal Code to be numbered, entitled and to read as follows:

6.54.410 Enforcement for Motor Vehicle-Based Peddlers

Any violation of this Chapter by a motor vehicle-based peddler shall be subject to any appropriate enforcement action by the City, which action may include without limitation the issuance of an administrative citation in accordance with Chapter 1.15 of Title 1 of this Code and the imposition of an administrative fine in the amount set forth in the schedule of fines established by resolution of the city council or the issuance of a criminal citation in accordance with the enforcement provisions set forth in Chapter 1.08 of Title 1 of this Code.

PASSED FOR PUBLICATION of title this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk