

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.)

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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.)