

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Rosalynn Hughey  
Jennifer Schembri

**SUBJECT:** Unpermitted Peddlers  
Enforcement Pilot

**DATE:** September 11, 2024

Approved



Date:

9/12/24

## INFORMATION

The purpose of this memorandum is to provide an update on staff actions to enhance enforcement of unpermitted food vending in alignment with City Council direction. Staff began coordinating various pilot enforcement strategies, including inspections by the City's Planning, Building, and Code Enforcement Department Code Enforcement Division and the County of Santa Clara Department of Environmental Health (County). This approach has had some early successes, though City and County staffing constraints remain the largest barrier to consistent enforcement. Staff will improve and refine these strategies to implement an enforcement plan for the 2024 downtown holiday events.

## BACKGROUND

On September 17, 2018, Senate Bill (SB) 946 was signed by Governor Brown.<sup>1</sup> SB 946 requires cities to allow sidewalk vending (peddling) commencing on January 1, 2019. State law allows for two types of vendors: stationary (a person who vends from a fixed approved location) and roaming (a mobile vendor who moves from place to place and stops only to complete a transaction). The San José Police Department (SJPD) Permits Unit classifies these two types of vendors (respectively) as "approved location peddlers" and "mobile peddlers." Under SB 946, municipalities cannot enact blanket bans on approved location peddlers or mobile peddlers but can continue to reasonably regulate the time, place, and manner that vendors operate.

<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB946](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB946)

On October 8, 2019, City Council approved an ordinance amending Chapter 6.54 of the San José Municipal Code (Peddler Permit Ordinance)<sup>2</sup> to conform to state law.<sup>3</sup> City Council also adopted a resolution amending the Administrative Citation Schedule of Fines in accordance with the maximum fine amounts allowable under SB 946.<sup>4</sup> The City's Peddler Permit Ordinance includes, but is not limited to, the following regulations:

- Requires food peddlers to obtain and display a valid permit from SJPD and the County of Santa Clara Department of Environmental Health (County). Approved location peddlers must have their location approved by SJPD.
- No peddling is allowed within 500 feet of City-permitted temporary special events, such as street fairs, festivals, or parades.
- No peddling is allowed within 500 feet of schools, farmers' markets, flea markets, and swap meets during hours of operation.
- No peddling is allowed within 500 feet of SAP Center, PayPal Park, Excite Ballpark, and the San Jose McEnery Convention Center on event days.
  - Note: pursuant to the Arena Management Agreement, the City is contractually obligated to enforce the 500-foot rule at the SAP Center.

SB 946 prohibits the use of criminal penalties for approved location or mobile peddling violations. Cities are limited to the issuance of administrative citations. This change in state law shifted the primary enforcement authority of peddlers from SJPD to the Code Enforcement Division of the Planning, Building, and Code Enforcement Department. SB 946 requires consideration of a person's ability to pay for an administrative citation, including being a recipient of certain government benefits or having an income below the poverty level. If a person meets these criteria, the City must accept 20% payment of the fine amount to resolve the citation. In addition to dictating the maximum fee amount, SB 946 specifies that no additional fines or penalties may be assessed, including for failure to pay.

Following City Council's adoption of the updated Peddler Permit Ordinance, City staff conducted various outreach efforts to encourage compliance. The Office of Economic Development and Cultural Affairs (OEDCA), Code Enforcement Division, and SJPD partnered on outreach efforts at the 2019 downtown holiday events (Christmas in the Park, Downtown Ice, and Winter Wonderland) and the SAP Center.<sup>5</sup> At a minimum, over 255 peddlers received flyers. This outreach aimed to educate peddlers on regulations, permitting options, and enforcement mechanisms for noncompliance.

The Fiscal Year (FY) 2023-2024 Adopted Budget included \$100,000 to address unpermitted peddling around the SAP Center and, subsequently, downtown holiday

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<sup>2</sup> [https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT6BULIRE\\_CH6.54PEPEOR](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT6BULIRE_CH6.54PEPEOR)

<sup>3</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=7739782&GUID=E4E5ADF2-4F01-4BDE-95F4-0DE3B9DB8C50>

<sup>4</sup> <https://records.sanjoseca.gov/Resolutions/RES2023-402.pdf>

<sup>5</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=8197115&GUID=DE9AA6D4-69D6-4317-8168-9A0EEA5C1970>

events. During the 2023 downtown holiday events, OEDCA organized outreach efforts with partners, including SJPD, the Fire Department, the Code Enforcement Division, the Department of Transportation (DOT), and the County. Outreach efforts with peddlers included multilingual City staff and promotores focused on education, safety interventions, and targeted Code Enforcement administrative citations for extreme safety concerns. In several cases, the threat of the citations resulted in the unpermitted peddlers demobilizing or substantially reducing the size of their operation. While these initial enforcement efforts helped raise peddler awareness of dangerous practices and the permitting process, they did not reduce the number of unpermitted vendors present.

The FY 2024-2025 Adopted Budget includes an additional \$100,000 for the continuation of a pilot program to promote health and safety in downtown through enforcement of the Peddler Permit Ordinance during the 2024 downtown holiday events.<sup>6</sup> The FY 2024-2025 Mayor's March Budget Message included direction to advocate with the County at the state level for unpermitted vendor regulatory changes.<sup>7</sup> The FY 2024-2025 Adopted Budget also includes \$20,000 for the Mesa Redonda program at Prosperity Lab to provide comprehensive training and incubation programs for local street vendors. OEDCA will manage this grant agreement. An additional \$78,000 in unexpended funds from the FY 2023-2024 Adopted Budget to address peddling around the SAP Center were rebudgeted to FY 2024-2025.

## **ANALYSIS**

The impacts of unpermitted peddling on public safety, cleanliness, and pedestrian access continue to be a significant concern to downtown venues, event stakeholders, and businesses. Large, unpermitted peddler setups with open flames sometimes pose dangers for both peddlers and the public. Some peddlers set up public seating areas in the roadway, potentially obstructing first responder access in the event of an emergency. Other challenges include illegal alcohol sales, interference with ingress and egress to event sites, and large items such as tables, chairs, and tents chained to City infrastructure and obstructing the right of way.

In response to City Council direction, the City Manager's Office of Administration, Policy, and Intergovernmental Relations and OEDCA organized a working group (CMO working group) to explore and test the effectiveness of current City and County unpermitted peddler enforcement mechanisms at key sites. The enforcement strategies listed below are continuously evaluated to inform effective deployment during the 2024 downtown holiday events.

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<sup>6</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/111497/638525773679170000>

<sup>7</sup> <https://www.sanjoseca.gov/home/showdocument?id=111351>

## **Administrative Citations**

The City enforces the Peddler Permit Ordinance through administrative citations issued by Code Enforcement Inspectors. Administrative citations can be issued to both food and merchandise peddlers. Code Enforcement requires SJPD presence when interacting with peddlers and issuing administrative citations to ensure staff safety. Rebudgeted FY 2023-2024 funds are being utilized for Code Enforcement Inspectors overtime to address ingress and egress concerns at SAP Center when SJPD officers are available. During these operations, Code Enforcement Inspectors have issued 23 administrative citations to date. Due to insufficient Secondary Enforcement Unit staffing to accompany inspectors, SJPD authorized a mix of City-sponsored overtime and on-duty personnel to support high-priority unpermitted peddler enforcement efforts on a very limited basis. SJPD continues seeking Secondary Enforcement Unit personnel for non-priority events.

SAP Code Enforcement Inspector operations occurred on the following dates:

- February 3, 2024;
- June 29, 2024;
- July 19, 2024;
- July 20, 2024;
- August 9, 2024;
- August 21, 2024; and
- August 28, 2024.

## **City-County Pilot Enforcement Activities**

The County enforces California Health and Safety Code, Section 114381.<sup>8</sup> This enforcement ensures that food peddlers have a valid County permit and adhere to safe food handling and storage practices to prevent foodborne illnesses. Under the California Health and Safety Code, the County may impound food and equipment found to be or suspected of being unsanitary. The County's authority to impound strengthens joint City-County unpermitted peddler enforcement operations. The CMO working group initiated a renewed effort to partner with the County on peddler enforcement efforts with SJPD present.

The first joint City-County enforcement operation occurred on July 20, 2024, outside of the Capitol Flea Market. While outside of downtown, the severe public safety concerns related to the peddlers and seating areas in the roadway prompted action. County inspectors issued cease-and-desist notices and impounded approximately 400 pounds of food. As of August 17, 2024, the roadway remains clear of peddler seating areas. Before this operation, the SJPD Crime Prevention team engaged the peddlers in the

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<sup>8</sup> [https://california.public.law/codes/ca\\_health\\_and\\_safety\\_code\\_section\\_114381.2](https://california.public.law/codes/ca_health_and_safety_code_section_114381.2)

area and provided information on becoming permitted. At least one peddler is working with Prosperity Lab on a business plan to operate from an approved location.

The City and County conducted joint enforcement actions at the SAP Center on August 9, 2024, and August 28, 2024. County inspectors first provided warnings and educational materials, which caused most unpermitted peddlers to stop operating. No food needed to be confiscated by the County, and the areas around the SAP Center remained clear.

The CMO working group will coordinate additional City-County enforcement operations focusing on the SAP Center, Civic Center, and the San Jose McEnery Convention Center through at least September 2024. While pilot findings are preliminary, County engagement appears to deter unpermitted peddlers more than Code Enforcement and SJPD presence alone. Subsequently, the CMO working group will collaborate with the County on enforcement partnership options for the 2024 downtown holiday events.

### **Illegal Alcohol Sales**

Downtown stakeholders increasingly raise concerns about illegal alcohol sales outside of events and brick-and-mortar bars and restaurants. Unlike peddling, unpermitted alcohol sale is a criminal offense and is enforced by SJPD. Beginning in April 2024, the CMO working group partnered with SJPD to ramp up undercover alcohol operations downtown. During these enforcement operations, an undercover officer attempts to buy alcohol and can issue criminal citations and make arrests. In November-December 2023 and April-July 2024, SJPD conducted 21 operations, resulting in 21 citations.

### **Right of Way Obstructions**

Unpermitted peddlers sometimes leave tents, chairs, tables, and other equipment in the right of way and, at times, chained to City or private property such as fences, light poles, and trees. Peddlers presumably do this to “save a spot” in a desirable location with heavy foot traffic. This defaces public property, creates a visually unappealing landscape downtown, and can restrict safe pedestrian passage. Chapter 13.24 of the San José Municipal Code gives DOT broad authority to remove items that obstruct areas of the street or sidewalk, even if those areas are still passable by pedestrians or vehicles.<sup>9</sup> The CMO working group partnered with the City Attorney’s Office and DOT to draft a standard operating procedure for removing peddler items left in the public right-of-way.

DOT is partnering with the CMO working group on an obstruction enforcement pilot downtown through at least September 2024. This pilot will be refined to maximize effectiveness during the 2024 downtown holiday events. The goal is to change behavior

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<sup>9</sup> [https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT13STSIPUPL\\_CH13.24STSIQB](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT13STSIPUPL_CH13.24STSIQB)

and deter peddlers from leaving items in public areas. When obstructions are identified, the working group coordinates the deployment of the DOT complaint truck to remove items and transport them to the Mabury Yard. When items are removed, multilingual signage with contact information is posted. Under Chapter 13.24.030 of the San José Municipal Code, the City is required to store items for ten days.<sup>10</sup> The City is not currently charging property owners for retrieval of items.

In late July 2024, the CMO working group began monitoring the areas around the SAP Center and the Civic Center Plaza for obstructions, particularly before and after major events. The complaint truck was deployed around the SAP Center on July 25, 2024, and 12 tents were transported to the Mabury Yard. Several peddlers arrived during the operation, and CMO working group staff facilitated the retrieval of items from the truck. Two calls were received about removed items, and retrieval was coordinated with DOT yard staff. The complaint truck was also deployed at the Convention Center on August 16, 2024. One chained tent was removed and transported to the Mabury Yard.

### **No Parking and Tow Zones**

The CMO working group also encounters illegal parking challenges related to unpermitted peddling. The primary challenge is unpermitted peddlers parking vehicles in No Parking, Red Zones, and Passenger Loading Zones for extended periods before, during, and after events. These illegally parked vehicles can disrupt traffic flow, impede emergency vehicle access, and complicate event logistics. Strategies to increase parking compliance during the 2024 downtown holiday events include sturdier temporary tow-away signage and exploring strategies to enhance enforcement of temporary tow zones during peak event days and times.

### **Peer City Analysis**

The CMO working group analyzed other cities' approaches to unpermitted peddling, including Santa Clara, Sacramento, Long Beach, San Francisco, and San Diego. Growing concerns by event organizers, professional sports, and brick-and-mortar restaurants have motivated all cities to increase unpermitted peddling enforcement. Some strategies adopted by other cities could be considered in San José should the City Council desire to allocate ongoing resources and staffing for unpermitted peddling enforcement.

The City of Santa Clara is working with the County to conduct unpermitted peddler enforcement at Levi's Stadium events. The CMO working group shadowed an operation at Levi's Stadium, observing the County issue ten impound notices to unpermitted peddlers and fill a dumpster with confiscated food. The City of Sacramento recently

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<sup>10</sup>[https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT13STSIPUPL\\_CH13.24STSIOB\\_13.24.030UNPRALAUISPR](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT13STSIPUPL_CH13.24STSIOB_13.24.030UNPRALAUISPR)

allocated funding for a nighttime Code Enforcement team of six full-time employees at \$650,000 annually to address unpermitted peddling and other common nighttime business compliance issues. This Code Enforcement team partners with Sacramento County to impound food and abandoned peddler equipment with a focus on maintaining clear ingress and egress at the Golden 1 Center.

Of particular interest to San José downtown stakeholders is the approach adopted by the City of San Diego. The City of San Diego updated its Sidewalk Vending Ordinance to give itself the authority to impound peddler food and equipment for operating without a San Diego County Environmental Health Permit.<sup>11</sup> The City of San Diego may also impound food and equipment for refusing to provide identification to a Code Enforcement Inspector, leaving items unattended, and obstructing pedestrian or vehicular movement, in addition to other grounds. The City of San Diego uses on-duty police officers to initiate impound, and a hazardous material contractor arrives to collect and store impounded items. As of June 17, 2024, the City of San Diego has impounded 28 peddler carts and 17 pounds of propane tanks. The City of San Deigo has spent \$32,000 on the hazardous material contract. City of San José staff are exploring this model.

### **State Advocacy**

The City Manager's Office of Administration, Policy, and Intergovernmental Relations is still developing specific state advocacy strategies to address unpermitted peddling in response to the Mayor's March Budget Message<sup>12</sup>. The 2024 Legislative Program includes an item to support legislation that gives back local control to regulate, safely support, and facilitate mobile food vendors through effective enforcement mechanisms while maintaining health and safety, supporting small businesses, and addressing racial and socio-economic equity issues.

In recent years, there have been efforts in the legislature to address peddling and the economic vibrancy of brick-and-mortar establishments more broadly. SB 925 (Wiener) would have authorized the City and County of San Francisco to adopt an ordinance requiring a permit to sell merchandise commonly targeted during retail theft on public property. This legislation did not proceed in the legislative process. Further conversations with the author's office will take place in advance of the 2025-2026 Legislative Session. The City is also currently sponsoring SB 969 (Wiener), which would allow licensed brick-and-mortar bars and restaurants to sell alcoholic beverages in off-premises entertainment zones. The bill preserves local control for cities to determine the parameters of entertainment zones and enables brick-and-mortar establishments to reap the economic benefits of outdoor activation. Staff will work with the City's delegation to explore legislative avenues to address unpermitted vending during the next legislative session.

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<sup>11</sup> <https://docs.sandiego.gov/municode/MuniCodeChapter03/Ch03Art06Division01.pdf>

<sup>12</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/111497/638525773679170000>

## **Next Steps**

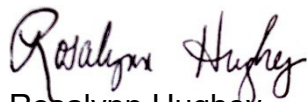
The CMO working group will continue coordinating Code Enforcement overtime staffing to issue administrative citations, County partnerships to impound food, SJPD operations to address illegal alcohol sales, and right-of-way obstructions operations with DOT.

These strategies will be evaluated and refined to deploy unpermitted peddling enforcement during the 2024 downtown holiday events. While there have been some early successes in utilizing these enforcement strategies, deploying adequate staffing resources to deter all unpermitted vending for the duration of the 2024 downtown holiday events will be challenging. Unpermitted peddling enforcement is not currently resourced long-term or Citywide, and City and County staffing is largely dependent on volunteer overtime shifts outside of business hours. Education has not had a meaningful impact on increasing peddler permits, and many peddlers operate in a manner that is not permissible under City or County requirements.

With these staffing limitations, the 2024 downtown holiday events enforcement strategy will concentrate enforcement efforts early. In addition to the outlined enforcement strategies, OEDCA is working with downtown holiday event organizers on curated space activation to deter unpermitted vending through environmental design.

## **COORDINATION**

This memorandum was coordinated with the City Attorney's Office, the City Manager's Budget Office, OEDCA, the City Manager's Office of Administration, Policy, and Intergovernmental Relations, the Planning, Building and Code Enforcement Department, SJPD, and Transportation Department, and the County of Santa Clara Department of Environmental Health,



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