

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



W14c

Date: March 27, 2023

To: **COMMISSIONERS AND INTERESTED PERSONS**

From: **KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DIANA LILLY, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
ALEX LLERANDI, COASTAL PLANNER, SAN DIEGO COAST DISTRICT**

Subject: **STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR
AMENDMENT NO. LCP-6-SAN-22-0065-3 (Pushcart Repeal) for
Commission Meeting of April 12, 2023.**

SYNOPSIS

On December 29, 2022, the City of San Diego Local Coastal Program (LCP) amendment LCP-6-SAN-22-0065-3 (Pushcart Repeal) was filed in the San Diego District office as part of the City's third and final LCP submittal for 2022. The submittal consisted of two other amendments: LCP-6-SAN-22-0064-3 (Community Planning Group Reform) and LCP-6-SAN-22-0063-3 (Cannabis Code Amendments).

The Pushcart Repeal received a one-year time extension from the Commission at the February 9, 2023, hearing, and the latest the amendment can be heard is February 2024.

SUMMARY OF AMENDMENT REQUEST

The subject amendment consists of two parts: the deletion of outdated regulations regarding pushcarts/sidewalk vending, and the addition of a policy prohibiting sidewalk vendors from interfering with public access to the shoreline. On September 18, 2018, Senate Bill 946 (SB 946) was approved, taking effect January 1, 2019, which allows a local authority to regulate sidewalk vending in accordance with the provisions of the bill. The bill defines a sidewalk vendor as a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or pedestrian path. The stated intent of SB 946 is to recognize that sidewalk vending provides important economic development opportunities for lower income and immigrant communities, fosters access to market goods, and creates dynamic public spaces. As such, SB 946 promotes sidewalk vending by prohibiting local governments from regulating time, space, and manner of sidewalk vending unless directly related to objective health, safety, and welfare concerns.

The City of San Diego's certified LCP already contained ordinances regulating pushcart vendors in the public right-of-way. The existing regulations required pushcart vendors to

obtain development permits and restricted them from various zones, such as agricultural zones, commercial zones, and industrial zones. Because the existing pushcart regulations did not conform to the requirements of SB 946, the City deleted them from the Municipal Code and replaced with a new set of sidewalk vending ordinances. In Line with SB 946, the new regulations view sidewalk vending mainly as a business activity rather than a development category. Thus, rather than place the new, SB 946-compliant ordinances in the Land Development Code where the previous pushcart regulations were, on May 17, 2022, the City added new sidewalk vending ordinances to Chapters 3 (Business Regulations, Business Taxes, Permits and Licenses) and 5 (Public Safety, Morals, and Welfare) of the Municipal Code that regulated the timing, location, and manner of sidewalk vending, as well as implementing ministerial permitting requirements for sidewalk vendors, all pursuant to the requirements of SB 946. Because the new ordinances regulated all aspects of sidewalk vending, the City's actions also amended Chapters 12 through 15 of the Municipal Code to remove existing, superseded regulations governing pushcarts (the City's previous term for sidewalk vending) in the public right-of-way.

After passage of the above changes, the City consulted with Coastal Commission staff to determine which parts of the City's action required Commission certification. After review by Commission staff, it was determined that the new sidewalk vending ordinances in Chapters 3 and 5 of the San Diego Municipal Code did not require submission for Commission certification because they amended chapters not included in the certified LCP Implementation Plan (IP) and did not have the potential to impact coastal resources. However, because Chapters 12 through 15 are in the Land Development Code, which is part of the certified IP, the changes to those chapters do require Commission certification. In addition, because the bulk of the new sidewalk vending regulations are now located in chapters outside of the certified LCP, Commission staff determined that IP policies should ensure sidewalk vendors do not interfere with public access to the shoreline. The City subsequently incorporated such a policy into Section 141.0619 (Pushcarts on Private Property) in a later, separate action that is included in this amendment submittal.

SUMMARY OF STAFF RECOMMENDATION

The deletion of the existing pushcart regulations would remove regulations for a permitted commercial use from the LCP. Because sidewalk vending in the public right-of-way often consists of vendors selling foods and goods to passing pedestrians, such vendors in the coastal zone could be seen as a visitor-serving commercial use. However, because sidewalk vending does occur in the public right-of-way, there is the potential that its presence could create impediments to public access through crowding out pedestrians from the sidewalk or crowding vendors blocking access points to popular coastal destinations, such as boardwalks and parks. Under the City's action to implement SB 946, such uses will still continue in the coastal zone, and the City's new ordinances will formalize these small-business operations so that they occur in a manner conducive with public safety and public access through timing, spacing, and operating requirements. A new policy prohibits sidewalk vendors from interfering with public access to the shoreline. Thus, the City's amendment can be found consistent with the public access policies of the certified Land Use Plans and be approved as submitted.

The appropriate motions and resolutions begin on page 6. The findings for approval of the Implementation Plan Amendment as submitted begin on page 6.

BACKGROUND

The City's first IP was certified in 1988, and the City then assumed permit authority. The IP consisted of portions of the City's Municipal Code, along with some Planned District Ordinances (PDOs) and Council Policies. In 1999, the Commission certified the City's Land Development Code, which primarily contains Chapters 11 through 15 of the Municipal Code. The LDC replaced the first IP and took effect in the coastal zone on January 1, 2000. The Commission has certified many IP amendments since 2000.

ADDITIONAL INFORMATION

Further information on the City of San Diego LCP amendment LCP-6-SAN-22-0065-3 may be obtained from Alexander Llerandi, Coastal Planner, at (619) 767-2370 or SanDiegoCoast@coastal.ca.gov.

TABLE OF CONTENTS

I. OVERVIEW	5
A. LCP HISTORY	5
B. STANDARD OF REVIEW.....	5
C. PUBLIC PARTICIPATION.....	5
II. MOTION AND RESOLUTION.....	6
III. FINDINGS FOR APPROVAL OF THE SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED	6
A. AMENDMENT DESCRIPTION.....	6
B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN	7
C. FINDINGS FOR APPROVAL	8
IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	9

EXHIBITS

[Exhibit 1 – Strikeout/Underline primary legislation](#)

[Exhibit 2 – Strikeout/underline public access legislation](#)

I. OVERVIEW

A. LCP HISTORY

The City of San Diego has a long history of involvement with the community planning process, and in 1977, requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988, for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time, but some have since been certified as LCP amendments. Other areas of deferred certification still remain today and will be acted on by the Coastal Commission in the future.

Since the effective certification of the City's LCP, there have been numerous major and minor amendments processed by the Commission. These have included everything from land use revisions in several segments, to the rezoning of single properties, to modifications of city-wide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC) and associated documents as the City's IP, replacing the original IP adopted in 1988. The LDC became effective in January 2000.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum opportunity to participate in the development of the LCP amendment prior to submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

II. MOTION AND RESOLUTION

MOTION:

I move that the Commission reject the Implementation Program Amendment No. LCP-6-SAN-22-0065-3 for the City of San Diego as submitted.

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a NO vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby certifies the Implementation Program Amendment for the City of San Diego as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plans, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

III. FINDINGS FOR APPROVAL OF THE SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

On September 18, 2018, Senate Bill 946 was approved, taking effect January 1, 2019, which allows the local authority to regulate sidewalk vending in accordance with the provisions of the bill. The bill defines a sidewalk vendor as a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or pedestrian path.

On May 17, 2022, the City approved sidewalk vending ordinances in order to implement Senate Bill 946. The sidewalk vending ordinances amended Chapters 3 and 5 of the San Diego Municipal Code to add several new ordinances regulating the timing, location, and manner of sidewalk vending, as well as implementing a permitting requirement for sidewalk vendors, all pursuant to the requirements of the senate bill. Because the new ordinances were designed to implement Senate Bill 946, the City's action also amended

chapters 12 through 15 of the San Diego Municipal Code to remove existing, non-conforming regulations governing pushcarts in the public right-of-way.

After local adoption of the above changes, the City consulted with Coastal Commission staff to determine which parts of the City's action required Commission certification. After review by Commission staff, it was determined that the new sidewalk vending ordinances in Chapters 3 and 5 of the San Diego Municipal Code did not require submission for Commission certification because they are amending chapters not in the certified Implementation Plan. However, because Chapters 12 through 15 are in the Land Development Code, which is part of the certified Implementation Plan, the amendments to those chapters did require Commission certification. Finally, because the new sidewalk vending ordinances would be in chapters outside of the certified LCP, discussions between Commission and City staff identified a change to Section 141.0619 that would still require sidewalk vendors to adhere to the public access policies of the LCP. The City subsequently adopted that change in a later, separate action that is included in this amendment submittal.

B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN

The standard of review for LCP implementation plan submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The certified LUP has a number of goals and policies relevant to the proposed amendment; the most applicable LUP standards are as follows:

In the Case of the City of San Diego, the City's LUPs are comprised of community planning areas based on its established neighborhoods and future urbanizing areas. Predicated on those community planning areas, the City utilized the geographic segmentation provisions of the LCP regulations and developed its land use plan component covering twelve different communities (i.e., North City, La Jolla, Pacific Beach, Mission Beach, Ocean Beach, Peninsula, Otay-Nestor, Downtown, Barrio Logan, and others). Each community plan or LCP Land Use Plan contains policies that protect public views, scenic resources, public access, recreational opportunities and sensitive coastal resources including, but not limited to, beaches, bluffs, slopes, hillsides, and environmentally sensitive lands in that community. The Commission's review of the proposed amendment to the Land Development Code must ensure that development is approved only when consistent with the certified LUPs.

Listed below are representative policy excerpts contained in the certified LUP segments in the Coastal Overlay Zone for the City of San Diego.

Pacific Beach Community Plan

- Create safe, pleasant, and useful pedestrian and bicycle pathways to connect the residential neighborhoods of Pacific Beach, such as Crown Point and Braemar, with commercial areas and community facilities, such as schools, parks, and the library. Remove barriers which impede pedestrian, bicycle, and disabled access.

Ocean Beach Community Plan

- Efficiently manage on-street parking to better serve the beach and commercial areas.
- Protect and improve visual access at street ends in conjunction with coastal physical access projects. Such public improvements should consider inclusion of benches, landscaping, improved walkways, bicycles racks, and stairwells from street ends to the beaches below.

La Jolla Land Use Plan

- Enhance existing public access to the ocean, beach, and park areas such as Ellen B. Scripps Park and Kellogg Park along the shoreline in order to be of greatest benefit to neighborhood residents and visitors to the community.
- Public views to and from the ocean from the first public roadway adjacent to the ocean shall be preserved and enhanced, including visual access across private properties at yards and setbacks.

C. FINDINGS FOR APPROVAL

The stated intent of SB 946 is to recognize that sidewalk vending provides important economic development opportunities for lower income and immigrant communities, fosters access to market goods, and creates dynamic public spaces. As such, SB 946 promotes sidewalk vending by prohibiting local governments from regulating time, space, and manner of sidewalk vending unless directly related to objective health, safety, and welfare concerns.

The City of San Diego's certified LCP already contained ordinances regulating pushcart vendors in the public right-of-way. The existing regulations required pushcart vendors to obtain development permits and restricted them from various zones, such as agricultural zones, commercial zones, and industrial zones. Because the existing pushcart regulations did not conform to the requirements of SB 946, the City acted to delete them from the Municipal Code and replace them with a new set of sidewalk vending ordinances. In line with SB 946, the City views sidewalk vending as a business activity rather than a development activity, and rather than place the new, SB 946-compliant ordinances in the Land Development Code where the previous pushcart regulations were, the City added the new sidewalk vending ordinances in Chapters 3 (Business Regulations, Business Taxes, Permits and Licenses) and 5 (Public Safety, Morals and Welfare) of the Municipal Code.

After passage of by the City of the deletion of the existing pushcart regulations from the Land Development Code and insertion of the new sidewalk vending ordinances into Chapters 3 and 5 of the Municipal Code, City staff consulted with Commission staff to determine which parts of the City's action required Commission certification and which, if any, did not. After review by Commission staff, it was determined that the new sidewalk vending ordinances did not require Commission certification because they were licensing and business operating ordinances being added to chapters of the Municipal Code outside of the certified Implementation Plan pursuant to the City's police powers. However,

because the existing pushcart regulations being deleted by the City were in the certified Implementation Plan, that action does require Commission certification.

The deletion of the existing pushcart regulations would remove regulations for a permitted commercial use from the LCP. Because sidewalk vending in the public right-of-way often consists of vendors selling foods and goods to passing pedestrians, such vendors in the coastal zone could be seen as a visitor-serving commercial use. However, because sidewalk vending does occur in the public right-of-way, there is the potential that its presence could create impediments to public access through crowding out pedestrians from the sidewalk or crowding vendors blocking access points to popular coastal destinations, such as boardwalks and parks.

Under the City's action to implement SB 946, sidewalk vending uses will still continue in the coastal zone, and the City's new ordinances will formalize these small-business operations so that they occur in a manner conducive with public safety and public access through timing, spacing, and operating requirements. Because the City's action would delete the existing ordinances regulation pushcarts from the LCP and add the new sidewalk vending ordinances outside of the LCP, Commission staff recommended during its review that the City add a provision in Chapter 14 requiring sidewalk vendors to still adhere to the certified LCP's public access policies. The City agreed and passed that amendment in a separate action that is part of this amendment submittal.

Because the City is replacing the deleted pushcart regulations with new sidewalk vending ordinances that will still allow such economic activity to occur in an orderly manner and is amending the LCP to require sidewalk vendors to adhere to public access policies of the LCP, there is low likelihood of adverse impacts to this visitor-serving activity or public access to the coast. Thus, the City's amendment can be found consistent with the public access policies of the certified Land Use Plans and be approved as submitted.

IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the Coastal Commission acts as lead agency for the purposes of fulfilling CEQA. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP submission.

For the City's action, an environmental impact report (EIR No. 96-0333) was completed for the original adoption of the Land Development Code, and a Program EIR (No. 104495) was prepared and certified for the General Plan Update. The City has previously utilized these documents for CEQA compliance in association with other code amendments. The City determined that this action would not result in new significant, indirect, or cumulative impacts over and above those disclosed in the aforementioned documents.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with

CEQA. In this particular case, the LCP amendment will not have any significant adverse effect on coastal resources, and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. In summary, no adverse impacts to coastal resources are anticipated and approval of the proposed amendment is consistent with CEQA.