

CITY COUNCIL'S NEW LAW AGAINST VENDORS, TABLERS, AND PERFORMERS

A BAD LAW

The proposed law, created behind closed doors by city staffers Julie Hende and Scott Collins and City Attorney Tony Condotti, includes a radical restriction on display for sale or donation, and sale of all kinds of items.

“Commercial Vending” is “to sell, offer for sale, expose or display for sale, solicit offers to purchase, or to barter food, goods, merchandise, or services in any area from a stand, table, pushcart, motor vehicle, bicycle, or by a person with or without the use of any other device, or to require someone to pay a fee or to set, negotiate, or establish a fee before providing food, goods, merchandise, or services, even if characterized by the vendor as a donation. [This]...includes the practice of providing, free of charge, an item which may not be vended, in exchange for the purchaser purchasing an item which may be vended as a condition for receiving the free item.

Exempted from the law are “Traditional expressive speech and petitioning activities, and the distribution of the following expressive items: newspapers, leaflets, pamphlets, bumper stickers, patches, and/or buttons.” Also “items, which have been created, written or composed by the vendor or performer: books, audio, video, or other recordings of their performances, paintings, photographs, & prints.” Additionally “any other item that is inherently communicative and is of nominal value or utility apart from its communication. Although an item may have some expressive purpose, it will be deemed to have more than nominal utility apart from its communication if it has a common and dominant non-expressive purpose.”

The City Attorney insisted that the law did not distinguish between what is art and what is not. Instead the hall monitors of Pacific Avenue will use the above definition to determine if an item is First Amendment protected or not.

BANNED FROM THE BLACKTOP

Banned as “items that have more than nominal utility apart from their communication” “include but are not limited to... food, housewares, appliances, articles of clothing, hats, scarves, sunglasses, auto parts, oils, incense, perfume, crystals, rocks, geodes, lotions, candles, jewelry, jewelry holders, toys, stuffed animals, glass and metal pipes, and any vaping device.”

“Allowed” Performances are “playing musical instruments, singing, dancing, acting, pantomiming, puppeteering, juggling, reciting, engaging in magic, creating visual

art in its entirety, presenting or enacting a play, work of music, physical or mental feat, or other constitutionally protected entertainment or form of expression."

Banned Performances include "(a) The application of substances to others' bodies, including but not limited to, paints, dyes, and inks; (b) The provision of personal services such as massage or hair weaving, cutting, or styling; (c) the completion or other partial creation of visual art; (d) the creation of visual art which is mass produced or produced with limited variation; or (e) the creation of handcrafts, such as weaving, carving, stitching, sewing, lacing, and beading objects such as jewelry, pottery, silver work, leather goods, and trinkets."

These bans are in effect "on the streets or sidewalks of Pacific Avenue; and on the streets or sidewalks of the side streets, alleys, and surface parking lots one block in either direction from Pacific Avenue, between Laurel and Water Streets."

The area in which no tabling is allowed except in select "exempt" zones will be chosen behind closed doors, largely by merchant pressure by Hende and Collins. That forbidden area extends from Laurel to Mission along Pacific Avenue and one block in either direction along the side streets. The forbidden zone apparently includes the twice-weekly Food Not Bombs set-up near the main Post Office. Although the new "Vanish the Vendors" law does not explicitly ban simply giving away free items such as food, another section of the ordinance prohibits the use of "display devices" (i.e. tables) except in the limited (less than 30) "exempt" zones which Hende and Collins choose to designate.

In addition the "Move Along Every Hour" law now requires what the current law does not--that folks time themselves. Anyone using a table, open guitar case, or any thing "capable of holding tangible things" placed on the sidewalk must move every hour without being asked to do so by a cop, security thug, or "host". The current law requires a warning that one's hour is up and then a "refusal" to move for the \$200-300 ticket to be given. The new law just requires that you be there for 61 minutes.

Two artists--Joff Jones and Alex Skelton--were taken away in handcuffs twice within two weeks for setting up their art displays outside the sacred "blue boxes". They had also declined to move every hour. Defying the massive police presence in their second arrest, the two have returned to Pacific Avenue to continue to assert their rights. See "Santa Cruz Artists Dare to Display Art "Outside of a Blue Box"" at <http://www.indybay.org/newsitems/2016/05/06/18786130.php>.