




Office of the City Manager

CONSENT CALENDAR
December 13, 2005

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Fran David, Director, Finance Department

Subject: Sidewalk Vending of Arts and Crafts, and Flowers

RECOMMENDATION

Adopt first reading of an Ordinance repealing and reenacting Berkeley Municipal Code (BMC) Chapter 9.48 regulating Sidewalk Vending of Arts and Crafts, and Flowers, which defines specific flower vendor requirements, along with those for arts and crafts vendors, and establishes sidewalk vending fees by Council Resolution; and adopt a Resolution, concurrent with the effective date of the Ordinance, establishing permit and identification card fees for sidewalk vending at the current rates, which were set by Ordinance No. 6,112–N.S. on January 1, 1993.

FISCAL IMPACTS OF RECOMMENDATION

None at this time. The current Berkeley Municipal Code (BMC) Chapter 9.48, to be repealed, includes permit fees for sidewalk vendors of arts and crafts, including flowers, and the revised BMC Chapter 9.48 to be reenacted establishes these fees by Council resolution. The resolution, recommended for adoption concurrent with the revised ordinance, sets the same fees as those already authorized. At a later date, staff will propose a revised fee structure that recovers the expense for administration and enforcement of the regulation.

CURRENT SITUATION AND ITS EFFECTS

The existing BMC Chapter 9.48 regulating sidewalk vending of arts and crafts includes “natural flowers and natural plants” as merchandise, but does not specifically include flower vending. In addition, flower vending is distinct from arts and crafts, in that flower vendors do not create their product, as specified in the ordinance. The recommended ordinance supports the continued operation of arts and crafts vendors, as well as recognizing the operation of flower vendors in commercially zoned areas of the City.

BACKGROUND

Flower vendors have been permitted by accommodation under the same BMC Chapter as sidewalk vendors of arts and crafts. There have been five flower vendors permitted to operate in the City at any given time in recent years.

RATIONALE FOR RECOMMENDATION

The recommendation made with this report aligns BMC Chapter 9.48 with the established practice of permitting flower vendors to operate at sites in commercial areas in the City. The reenacted Ordinance for this Chapter recognizes and defines these flower vendors as distinct from the sidewalk vendors of arts and crafts. In addition, the recommendation separates administration of this Chapter (in the reenacted Ordinance) from the fees for vendor permits and enforcement of the regulations (established by the Resolution). This is an important step toward recovery of the City's costs for administration, permitting and enforcement of sidewalk vendors. Furthermore, suspension and revocation of permits are clearly defined, as is the appeals process and enforcement of each. Penalty dates have also been defined with exact times and dates.

ALTERNATIVE ACTIONS CONSIDERED

An alternative is adding a new BMC Chapter separately regulating flower vending, which would essentially duplicate the current Chapter for arts and crafts vending. This alternative is more than what is required, since the recommendation addresses flower vendors within the existing format.

CONTACT PERSON

Susie Monary-Wilson, Customer Service Manager, 981-7229

Drew Renter, Field Representative, 981-7256

Attachments:

1: Ordinance

2: Resolution

ORDINANCE NO. -N.S.

REPEALING AND REENACTING CHAPTER 9.48 OF THE BERKELEY MUNICIPAL CODE RELATING TO SIDEWALK VENDING OF ARTS AND CRAFTS, AND FLOWERS, ON THE SIDEWALKS AND RIGHTS-OF-WAY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 9.48 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

Chapter 9.48

Sidewalk Vending – Arts and Crafts; Flowers

Sections:

- 9.48.010 Purpose.**
- 9.48.020 Definitions.**
- 9.48.030 Vending prohibited without approval.**
- 9.48.040 Designation of vending locations.**
- 9.48.050 Applications -- Review –Approval or denial.**
- 9.48.060 Vending permits – Issuance – Expiration – Renewal – Non-transferability.**
- 9.48.070 Allocation of spaces for vending.**
- 9.48.080 Operation of vending facilities – Hours when permitted.**
- 9.48.090 Vending facility standards.**
- 9.48.100 Cleanup responsibility and indemnity.**
- 9.48.110 Fees.**
- 9.48.120 Suspension and revocation – Appeals.**
- 9.48.130 Enforcement – Violation – Remedies.**
- 9.48.140 Finality of administrative citations for purposes of enforcement.**

9.48.010 Purpose.

This chapter is enacted to regulate arts and crafts vending, and flower vending on the public sidewalks and rights of way of the City.

9.48.020 Definitions.

For the purpose of this chapter the following terms have the following meanings unless it appears from their context that a different meaning is intended.

- A. “Arts and crafts vending” is the business of vending any of the following or similar items: crafts, handiwork, artifacts, and art or artwork of any kind.
- B. “Arts and crafts vending facility” includes a table or stand to display the product, as well as any additional facility in which the actual product is constructed or and the material are kept.
- C. “Arts and crafts vendor” is a person who has received all required approvals for arts and crafts vending under this chapter.

D. "City Manager" means the City Manager or his/her designee, except when specified or the context requires a different interpretation.

E. "Employee" means any person hired or paid compensation by, or any person under contract to, an arts and crafts vendor or a flower vendor.

F. "Flower vending" is the business of vending any of the following items: flowers, floral arrangements, plants, wreaths, and flower related materials.

G. "Flower vending facility" includes a table, stand or cart to display the product, as well as any additional facility in which the actual product is constructed and the material are kept.

H. "Flower vendor" is a person who has received all required approvals for flower vending under this chapter.

I. "Identification card" or "ID card" is that card issued by the City under this chapter to identify persons authorized to vend arts and crafts or flowers under this chapter.

J. "Person" is any individual, co-partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

K. "Right of way" or "Public right of way" shall mean land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved and dedicated to the general public for street, highway, alley, public utility, or pedestrian walkway purposes whether or not said land has been improved or accepted for maintenance by the City, and includes, but is not limited to, streets, roadways, planter strips and sidewalks.

L. "Sidewalk" is that area of improved real property between any curb face and the property line of adjoining real property.

M. "Site allocation" is the allocation by the City to an applicant of a site on which the applicant may engage in vending.

N. "Vending" is the business of selling or causing to be sold or transferred, for cash or consideration, arts and crafts or flowers.

O. "Vending equipment" includes but is not limited to any materials, merchandise, tools, carts, tables or other items owned by, in the possession of or associated with a permitted vendor.

P. "Vendor" is a person who is in the business of vending.

9.48.030 Vending prohibited without approval.

No person may engage in vending from a stationary location on the public right of way except pursuant to this chapter, or as may be permitted at the Berkeley Flea Market, Farmers Markets, or other events permitted by the City under Chapters 6.46 or 13.44 of this code.

9.48.040 Designation of vending locations.

Vending pursuant to this chapter shall be allowed only in commercially zoned districts, at locations specified by the City Manager.

9.48.050 Applications -- Review -- Approval or denial.

A. Any person desiring a vending permit under this chapter shall file an application with the Department of Finance on the form provided.

B. The application shall contain the following information:

1. The name, mailing address, phone number and social security number of the applicant;

2. The federal and state employer's identification number; the state sales tax identification number if sales tax is chargeable to the items sold;
 3. A description of the art, craft or flower item(s) the applicant proposes to sell.
 4. For arts and crafts vendors, a declaration under penalty of perjury that the art or craft item for which the applicant seeks a permit to sell is of the applicant's own creation and was created or produced in his or her presence and under his or her direct and personal supervision. The declaration shall further state that the applicant agrees to personally create, upon one week's notice and in the presence of the City Manager or his/her designated representative, any art or craft offered for sale by the vendor.
 5. The extent to which the applicant would be personally and actively engaged in the preparation and/or sale of products.
 6. The applicant's ability to successfully operate a vending business; previous experience in street vending or comparable activity is desirable.
 7. The applicant's history of compliance or noncompliance with City ordinances or state laws relating to business regulation, arts and crafts vending and flower vending.
- C. Applications may be submitted at any time, but may be rejected or placed on a waiting list if space is not available at the time of submission.
- D. The City Manager shall review and approve or deny applications based on the information submitted, the applicant's compliance with this chapter, and any other relevant information. The City Manager may establish further specific criteria, and procedures, for the review of applications.
- E. The City Manager's determinations under this section are final, except that determinations made by a designee of the City Manager may be appealed to the City Manager, whose decision on appeal shall be final.

9.48.060 Vending permits – Issuance – Expiration – Renewal – Non-transferability.

- A. Upon approval of an application, the City Manager shall issue a vending permit to the vendor and an identification (ID) card to the vendor and each employee. The maximum number of permits that may be issued and in effect at any time shall be 350.
- B. Annual vending permits expire annually at midnight on December 31st of each year. Half-year permits shall expire at midnight on either June 30th or December 31st of each year, at the option of the applicant.
- C. A vendor who has not committed any violations of this chapter during the preceding calendar year may renew his or her permit by submitting the required form no later than February 28th, for full and first half year permits. The second half-year permits must be renewed no later than July 31st of each year. Permits that are not renewed prior to their expiration date shall be invalid, and vending with such a permit is a violation of this chapter. A vendor who has committed a violation of this chapter may be denied renewal by the City Manager, but shall be placed at the end of the waiting list, if any. If there is no waiting list, such vendor shall not be allowed to renew for one year.
- D. No person may hold or be issued more than one vending permit.
- E. Vending permits issued pursuant to this chapter are nontransferable. Any attempt to transfer a permit shall render it immediately invalid.

F. Every individual engaged in arts and crafts vending and flower vending shall obtain an ID card and have an unexpired ID card in his/her possession at all times while he/she is vending. The term of the ID card shall correspond with the term of the applicable vending permit. No person may hold more than one ID card or be an employee of more than one permitted vendor at any given time.

G. Approval of a vending permit under this chapter does not exempt the permittee from Chapter 9.04, and permittees are required to pay the business license tax imposed by Chapter 9.04.

9.48.070 Allocation of spaces for vending.

A. The City Manager shall allocate spaces to permitted vendors in his/her sole discretion after considering all factors relevant to managing the right of way, including, but not limited to, accessibility, safety, aesthetics, cleanliness, and obstruction of other competing uses of the right of way.

B. The City Manager may require arts and crafts vendors and flower vendors to move to different sites at any time, in his/her sole discretion, but not more frequently than once in 90 days.

C. The City Manager may designate areas where spaces will be allocated by a random process.

D. Vendors shall be entitled to no more than one space in the City of Berkeley at any one time.

9.48.080 Operation of vending facilities – Hours when permitted.

A. Vending permits shall be visible at all times at the vending location. All persons engaged in vending shall wear their ID cards while vending.

B. No more than two employees, including the permittee, shall sit in, stand in or otherwise occupy a sales location at any one time.

C. Each purchaser of arts and craft items sold hereunder shall be given in writing the name, mailing address and City permit number of permittee.

D. Vending pursuant to this chapter is permitted only between the hours of 7:00 a.m. and 9:00 p.m.

E. Vending facilities may not remain at their allocated sites or any other location on the public right of way between the hours of 9:30 p.m. and 6:30 a.m.

F. Vending facilities may not be moved to or from an allocated site between 6:30 a.m. and 9:30 a.m. or 3:30 p.m. and 6:30 p.m., or after 9:30 p.m.

9.48.090 Vending facility standards.

A. Vending equipment shall be easily moved and shall be self-supporting. Vending equipment may not be attached, tied or locked to trees, hydrants, electroliers or other permanent vertical structures or benches.

B. Vending equipment not placed in front of a building shall have a maximum length of nine feet, a maximum depth of seven feet and a maximum height of eight feet, except ventilating ducts may exceed eight feet but shall not exceed ten feet.

C. Vending equipment located in front of a building shall maintain a minimum distance of ten feet, six inches from said building and may not exceed four feet, six inches in height, excluding ventilating ducts.

D. All vending equipment shall maintain a minimum distance of 18 inches from the curb face.

E. Notwithstanding any of the provisions of this section, vending equipment, merchandise offered for sale or otherwise associated with the vendor, and salespeople, shall not block, impede or in any way hamper pedestrian movement or cause or allow to be caused any hazard to pedestrians.

F. In addition to the requirements of this section, vending facilities shall comply with any standards established by the City Manager.

9.48.100 Cleanup responsibility and indemnity.

A. Vendors shall maintain their sales location in a clean and hazard-free condition, and failure to do so shall be cause for suspension or revocation of the permit.

B. By accepting a permit under this chapter, vendors agree to indemnify and hold harmless the City, its officers and employees from any and all damages or injury to persons or property proximately caused by the act or neglect of the vendor or by hazardous or negligent conditions maintained at the vendor's sales location.

9.48.110 Fees.

The City Council may by resolution establish fees for the administration of this chapter and for the privilege of using sidewalks and rights of way pursuant to this chapter.

9.48.120 Suspension and revocation – Appeals

A. The City Manager may suspend or revoke any permit issued pursuant to this chapter upon a showing of good cause, violation of this chapter, or a public offense or violation by the permittee relating to the vending activity.

B. Any person whose permit has been revoked or suspended shall receive in writing an explanation of such action by the City Manager.

C. Any person aggrieved by any decision of a designee of the City Manager to suspend or revoke a permit may appeal to the City Manager by filing with the City Manager a written statement setting forth in full the grounds of the appeal within 10 days of the date the action being appealed is communicated to the appellant.

D. The City Manager may issue regulations to implement this section. Such regulations shall be in writing and available to any person so requesting them.

E. Decisions of the City Manager under this section shall be final.

9.48.130 Enforcement – Violation – Remedies.

A. The City Manager and authorized employees are empowered to investigate and conduct inspections to determine whether permittees and other persons are complying with this chapter.

B. Violations of this chapter are misdemeanors, but may be charged as infractions in the discretion of the citing officer.

C. After reasonable notice and an opportunity to correct, the City may impound or close a vending facility.

D. Violation of this chapter is hereby declared to be a public nuisance.

E. The remedies set forth in this chapter are cumulative.

9.48.140 Finality of administrative citations for purposes of enforcement

A. In any denial of renewal under Section 9.48.060.C or any proceeding under Sections 9.48.120 or 9.48.130, a vendor shall be conclusively presumed to have committed any violation that was the subject of any administrative citation that became final during the calendar year in which the renewal was denied or the proceeding was initiated.

B. For purposes of this section and Sections 9.48.060.C, 9.48.120 and 9.48.130, an administrative citation becomes final upon the expiration of the deadline for the cited person to request an administrative hearing under Chapter 1.28, or, if an administrative hearing is requested and held, the expiration of the deadline for seeking judicial relief as set forth in Chapter 1.28.

C. If a citant seeks judicial relief, the administrative citation is final when the resulting judgment becomes final.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

RESOLUTION NO. -N.S.

ESTABLISHING FEES FOR ARTSAND CRAFTS, AND FLOWER VENDORS

WHEREAS, Berkeley Municipal Code Chapter 9.48 regulating sidewalk vending of arts, crafts and flowers has been repealed and reenacted, and now specifies fees be established by Council resolution.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley establishes the following fees for:

Annual permit fee for each art, craft, or flower vendor	\$240
Annual identification card fee for each employee of an art, craft, or flower vendor	\$5

BE IT FURTHER RESOLVED, that the City Manager is authorized to implement the program and appropriate funding for related expenditures.