

1 BY AUTHORITY

2 ORDINANCE NO.

COUNCIL BILL NO. 672

3 SERIES OF 2009

4 COMMITTEE OF REFERENCE:  
5 PUBLIC WORKS

6 **A BILL**

7 **For an ordinance relating to Division 6.5 (16<sup>th</sup> Street Mall Vending), of Article**  
8 **XIV (Temporary Occupancy of Public Right-of-Way) of Chapter 49 (Streets,**  
9 **Sidewalks and Public Ways), making changes to permitting and the cluster**  
10 **permitting processes.**

11 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

12 **Section 1.** Division 6.5 (16<sup>th</sup> Street Mall Vending), of Article XIV (Temporary  
13 Occupancy of Public Right-of-Way), of Chapter 49 (Streets, Sidewalks and Public Ways), of the  
14 Denver Revised Municipal Code shall be amended by deleting the language stricken and adding  
15 the language underlined below to read and be read as follows:

16 DIVISION 6.5. 16th STREET MALL VENDING

17 **Sec. 49-538.** Boundaries of the 16th Street Pedestrian and Transit Mall.

18 For the purposes of the whole of this division, the 16th Street Pedestrian and Transit Mall shall  
19 mean the portion of 16th Street and an area north and south of 16th Street within fifty (50) feet of  
20 16th Street between the west curb line of Broadway, which is twenty (20) feet east of the west  
21 property line of Broadway, and the southeasterly curb line of Wewatta Street, which is sixteen  
22 (16) feet west of the east right-of-way line of Wewatta Street.

23 **Sec. 49-538.1.** Definitions.

- 24 (1) *Entertainer(s).* An individual or group of individuals providing a public performance.
- 25 (2) *Food court.* A group of two (2) or more restaurants operated in the same fixed premises  
26 with common seating and central access, where access to the premises is controlled by the  
27 property owner or his designated representative.
- 28 (3) *Kiosk.* A small, quasi-permanent booth-like structure used for vending.
- 29 (3.5) *Manager.* The manager of public works or the manager's designee.
- 30 (4) *Product sampling.* The free distribution of a tangible product on the 16th Street Pedestrian  
31 and Transit Mall.
- 32

- 1 (5) *Public seating area.* A free, public amenity on the 16th Street Pedestrian and Transit Mall  
2 located in the median area. Any person may use a public seating area free of charge.
- 3 (6) *Pushcart.* A lightweight cart that is pushed by hand and used for vending.
- 4 (7) *Sidewalk cafe.* An extension of an existing, indoor, licensed restaurant. Persons utilizing  
5 the sidewalk cafe must be patrons of the restaurant.
- 6 (8) *Special Event.* A unique or notable happening, occasion or activity of limited duration,  
7 geographic area and purpose.

8 **Sec. 49-538.2.** Purpose.

9 In order to provide for the continuing revitalization of the downtown area, including the  
10 development of social and economic activity, the city council finds and determines that a street  
11 vending program will permit enhanced use of public space, will provide a complement to the  
12 businesses operating from fixed premises, and will promote activity in the area. The primary  
13 purposes of the 16th Street Pedestrian and Transit Mall are to serve as a transit way and the  
14 central gathering place for the city's core. All activities permitted in this division should be  
15 allowed based on their ability to complement either of these purposes.

16 **Sec. 49-538.3.** Eligibility.

- 17 (1) The manager may issue to any person or organization a permit for a ~~vending~~ pushcart,  
18 kiosk, public seating area, sidewalk cafe, sidewalk sale, special event, ~~or entertainment or~~  
19 vending cluster area on the 16th Street Pedestrian and Transit Mall at a location approved  
20 by the manager. The manager has authority to promulgate rules and regulations as  
21 necessary to implement this process.
- 22 ~~(2) A pushcart vendor may sell food and beverages, flowers, merchandise or services. A kiosk~~  
23 ~~operator may sell flowers, merchandise or services. A sidewalk cafe operator may sell only~~  
24 ~~food and beverages. A public seating area operator provides free seating to the public.~~  
25 ~~Entertainers may collect tips.~~
- 26 ~~(3)~~ The manager may issue to an organization or group a daily permit allowing them to engage  
27 in product sampling ~~hand out free product samples on the 16th Street Pedestrian and~~  
28 ~~Transit Mall.~~
- 29 ~~(43)~~ Once a permit has been issued and remains in effect for a vending pushcart, kiosk,  
30 sidewalk cafe, public seating area, product sampling, or sidewalk sale at a given location,

1 no other person or organization may be issued such a permit for the same location and  
2 time period.

3 (54) It shall be unlawful for any person or organization to operate a vending pushcart, kiosk,  
4 sidewalk cafe, public seating area, sidewalk sale, entertainer, or to offer product samples or  
5 carry on the business of a peddler on the 16th Street Pedestrian and Transit Mall except as  
6 permitted in this division.

7 **Sec. 49-538.4.** Application for permit.

8 An application for permit under this division shall be submitted to the manager of public works  
9 accompanied by a nonrefundable application fee. Applications shall include, but not be limited  
10 to, the following information:

- 11 (1) The name and address of applicant;
- 12 (2) Type of operation to be conducted (either vending pushcart, kiosk, public seating area,  
13 sidewalk cafe, entertainer, product sampling, or sidewalk sale);
- 14 (3) If applicable, the type of food, beverages, services, or merchandise to be sold;
- 15 (4) A description of the design, including detailed scaled drawings of the pushcart, kiosk,  
16 sidewalk cafe, or public seating area, including plan and typical side elevations, material  
17 specifications and color and material samples, and the size and location of signs;
- 18 (5) A valid copy of a license issued pursuant to the provisions of chapter 23 of the Revised  
19 Municipal Code, if applicable; and
- 20 (6) The location for which application for a permit is made.

21 **Sec. 49-538.5.** Review of application.

22 Before issuing a permit under this division, the manager shall refer and review the permit  
23 application as provided below:

- 24 (1) The application shall be referred to a mall use committee, consisting of not more than ten  
25 (10) people and at least four (4) of the people shall represent a downtown interest. The  
26 members of the mall use committee shall be appointed by the manager with the advice of  
27 the Downtown Denver Business Improvement District and shall serve at the pleasure of the  
28 manager.
- 29 (2) The mall use committee shall review the application and make a recommendation to the  
30 manager regarding issuance of the permit based on a review of the following:

- 1 a. Whether the proposed use, design, and location would result in congestion of the  
2 public space, particularly at corners of the 16th Street Pedestrian and Transit Mall;
- 3 a.5. Whether the proposed use, except in the case of sidewalk cafes, maintains a 15-  
4 foot clearance from the property line, for corner uses;
- 5 b. Whether the applicant has obtained the written comments of any adjacent property  
6 owner and any proprietor of an establishment offering comparable merchandise, whose  
7 main entrance is within one (1) level of the street, and is located within two hundred (200)  
8 feet of the proposed location; If the establishment offering comparable merchandise is  
9 within a food court, the two hundred (200) feet will be measured from the entrance of the  
10 food court. This rule shall not apply in instances where the vendor was issued a permit  
11 prior to a competitor locating within two hundred (200) feet of a vendor's location;
- 12 c. Whether the proposed use would inhibit easy access to street furniture such as sign  
13 posts, lamp posts, bus stops, benches, telephone booths, planters, trash receptacles,  
14 newspaper vending devices, and public art;
- 15 d. Whether the proposed design complies with required design standards and  
16 recommended design guidelines;
- 17 e. Whether placement of the proposed use ~~vending cart~~ interferes with the safe and  
18 efficient operation of the shuttles on the 16th Street Pedestrian and Transit Mall;
- 19 f. Whether the proposed use interferes with the continuing care or maintenance of the  
20 16th Street Pedestrian and Transit Mall; and
- 21 g. Whether the proposed use jeopardizes public safety or security.

22 (3) The manager shall consider the recommendations made by the mall use committee and  
23 make a determination as to whether to issue the permit.

24 **Sec. 49-538.6.** Effect of disapproval.

25 If the manager disapproves the application, no permit shall be issued.

26 **Sec. 49-538.7.** Requirements for issuance.

27 A permit issued under this division shall be subject to the following requirements:

- 28 (1) The permit shall be valid for a period of not more than twelve (12) months from and after the  
29 date of issuance, subject to temporary suspension or revocation as provided for in this  
30 division. The expiration date for each permit shall be shown on the permit, and each permit  
31 shall expire at midnight on the expiration date. Any permit holder may apply for a renewal

1 permit in the same manner as an original application, and shall be subject to the same  
2 criteria for approval.

3 (2) The manager shall by rules and regulations establish fees for permits and shall establish  
4 criteria for determining the amount of said fees based on:

- 5 a. The type of use proposed;
- 6 b. The probable impact of the proposed use on the flow of traffic and pedestrians;
- 7 c. The probable impact of the proposed use on maintenance, care, and security of the  
8 proposed location.

9 (3) Each permit shall be valid for only one (1) location per permit.

10 (4) In addition to the permittee's name and such other information required by the manager, the  
11 permit shall contain the following:

- 12 a. The period of time for which the permit was issued;
- 13 b. A statement that the permit issued is personal only and is not transferable in any  
14 manner;
- 15 c. The designated location;
- 16 d. A statement that the permit is valid only when used at the location designated on the  
17 permit;
- 18 e. The type of permit issued;
- 19 f. A statement that the permit is subject to the provisions of this chapter 49.

20 **Sec. 49-538.8.** Revocation or suspension of a permit.

21 (1) A permit may be revoked by the manager if the manager determines that the vending  
22 location is no longer compatible with the design of the public space or if the permittee  
23 violates any provision of this division or the rules and regulations promulgated hereunder;  
24 provided that the permittee is given notice at least ten (10) days prior to the revocation. The  
25 permittee may request a hearing as provided in section 56-106 of the Revised Municipal  
26 Code.

27 (2) A permit may be suspended temporarily for a period of up to seventy-two (72) hours in any  
28 seven (7) consecutive day period without compliance with the notice required by section  
29 49-538.8(1) when necessary to restrict access through the public right-of-way at the  
30 location covered by such permit.

- 1 (3) A permit may be suspended temporarily for a period in excess of seventy-two (72) hours if  
2 necessary to restrict, accommodate or maintain access through the public right-of-way at  
3 the location designated on the permit during such period for private construction or public  
4 works activities or requirements in the permit location or adjacent area or in the general  
5 exercise of police or public health or safety powers; provided that the permittee shall be:
- 6 a. Given notice twenty-four (24) hours prior to the temporary suspension of the intended  
7 commencement date and anticipated duration of the suspension period; and
  - 8 b. Entitled to apply for a temporary permit, without paying an additional permit fee, for  
9 another designated location not already otherwise subject to an existing ~~exclusive~~  
10 ~~location~~ permit issued to another.

11 A temporary permit or operation conducted pursuant to such permit shall be subject to all the  
12 provisions of this division.

13  
14 Sec. 49-538.9. Restrictions upon operations.

- 15 (1) ~~A person having a valid~~ permittee, as authorized in a permit issued pursuant to this division  
16 may display approved food and beverages, flowers or other merchandise, or information  
17 pertaining to services provided on any approved pushcart or kiosk or may display food and  
18 beverages at an approved sidewalk cafe.
- 19 (2) The manager may approve rules and regulations as to location, methods of operation,  
20 spacing, design standards and size of vending devices and any ancillary equipment~~A~~  
21 ~~vending pushcart not located on the 16th Street Pedestrian and Transit Mall granite may~~  
22 ~~occupy an area no larger than sixteen (16) square feet and may not exceed three (3) feet in~~  
23 ~~width, excluding wheels; nor six (6) feet in length, including any handle, and five (5) feet in~~  
24 ~~height, excluding a canopy, umbrella or transparent enclosure.~~
- 25 (3) ~~A vending pushcart located on the 16th Street Pedestrian and Transit Mall granite sidewalk~~  
26 ~~may occupy an area no larger than thirty-two (32) square feet and may not exceed four (4)~~  
27 ~~feet in width, excluding wheels; nor eight (8) feet in length, including any handle, and six (6)~~  
28 ~~feet in height, excluding a canopy, umbrella or transparent enclosure.~~
- 29 (4) ~~A vending kiosk located in the median between transit paths on the 16th Street Pedestrian~~  
30 ~~and Transit Mall may occupy an area no larger than eighty (80) square feet and may not~~

1 exceed eight (8) feet in width, excluding wheels; and ten (10) feet in length, including any  
2 handle, and ten (10) feet in height, excluding a canopy, umbrella or transparent enclosure.

3 ~~(5) No permittee may use any device, chair, stand, box, container or table that has not been~~  
4 ~~approved by the manager.~~

5 ~~(6) Vending pushcarts and kiosks must meet the design standards set forth in the rules and~~  
6 ~~regulations. In addition, design guidelines, also included in the rules and regulations, will be~~  
7 ~~used as a reference standard in the design review.~~

8 (73) The permittee shall pick up paper, cardboard, wood or plastic containers, wrappers or any  
9 similar litter which is deposited by any person within twenty-five (25) feet of the approved  
10 location designated on the permit. Permittee is also responsible for cleaning up any grease  
11 or condiments from the sidewalk or the median between the transit paths.

12 (84) No permittee may operate in any location other than the one designated on the permit.

13 (95) The permittee shall comply with all applicable provisions of the ordinances of the city.

14 ~~(106) No permittee may leave the pushcart vending device, kiosk, or sidewalk cafe unattended.~~

15 ~~(147) No permittee may conduct business at the location designated on the permit at any time~~  
16 ~~when such location is within an area for which the manager has issued a permit for a street~~  
17 ~~fair, festival or similar event under article XVI of this chapter unless the holder of the latter~~  
18 ~~permit furnishes permission to the permittee in writing and notifies the manager of such~~  
19 ~~permission. A permittee vendor may apply at no additional cost for a temporary alternate~~  
20 ~~vending site providing such vendor returns to the original site covered in his the permit after~~  
21 ~~the event.~~

22 ~~(128) Each permittee shall maintain the pushcart, kiosk, sidewalk cafe or public seating area in~~  
23 ~~good condition.~~

24 **Sec. 49-538.10.** Exemption from peddler's license.

25 A permittee under this division shall not be required to obtain a peddler's license and shall not be  
26 subject to the provisions of article II of chapter 47 of the Revised Municipal Code relating to  
27 peddler's license.

28 **Sec. 49-538.11.** Principal also liable.

29 Any person, firm or corporation, or any officer or director thereof, who is a permittee, shall, also,  
30 be liable for the violation of any provision of this division by any employee or agent of the  
31 permittee.

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**Sec. 49-538.12.** Vending cluster areas.

- (1) ~~Upon request, the~~ The manager may issue to any person or organization a permit for a designate any portion of the 16th Street Pedestrian and Transit Mall as a vending cluster area for any or all of the 16<sup>th</sup> Street Pedestrian and Transit Mall. Before ~~designating a vending cluster area~~ issuing such a permit, the manager shall refer the proposed ~~designation~~ permit to the mall use committee which shall review the request and make an advisory recommendation on the proposed location to the manager based on review of the following criteria:
  - a. The single applicant is a political subdivision of the state of Colorado and has a vending management program;
  - b. The vending cluster area and vending management program will further the goals and purposes of this division;
  - c. Unified management of vending in the designated vending cluster area will not detrimentally affect the purpose of other vending activities under this division; and
  - d. The adjacent property owner(s) have had the opportunity to provide ~~provided~~ written comments concerning the vending cluster area.
- (2) Any vending ~~permits issued~~ vendors operating within a vending cluster area shall be subject to the terms, conditions, and limitations of this division, except as otherwise specifically provided in this ~~division~~ section.
- (3) In ~~designating a such an area~~ issuing a vending cluster area permit, the manager of public works shall determine the total number and location of vending sites to be granted within the vending cluster area. The manager shall establish a fee for the vending cluster area based on the total number of vending sites and the applicant for the vending cluster area permit shall then submit the fee to the manager.
- (4) ~~The manager may allow all permits within such an area in excess of the number authorized by rule or regulation at the time of designation.~~ The vendors shall comply with all the provisions of this division, including rules and regulations promulgated hereunder, except those regarding the issuance of permits by the manager. The applicant may impose additional requirements of vendors in the vending cluster area not inconsistent with other

1 requirements of this division. The applicant shall be solely responsible for enforcing any  
2 additional requirements so imposed.

3 (5) The applicant shall be responsible to the manager for implementing the vendor cluster area  
4 in accordance with the terms of the permit, the rules and regulations and this ordinance.

5 (6) The vendors shall be responsible to the manager if they violate this ordinance or the rules  
6 and regulations promulgated hereunder and may be directly cited by the city for any such  
7 violation.

8 (7) No more than three (3) vending cluster areas may be permitted at any one (1) time.

9 COMMITTEE APPROVAL DATE: 11/3/2009.

10 MAYOR-COUNCIL DATE: 11/10/2009.

11 PASSED BY THE COUNCIL \_\_\_\_\_ 2009

12 \_\_\_\_\_ - PRESIDENT

13 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2009

14 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
15 EX-OFFICIO CLERK OF THE  
16 CITY AND COUNTY OF DENVER  
17

18 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2009; \_\_\_\_\_ 2009

19 PREPARED BY: Kerry A. Buckey, Assistant City Attorney 11/3/2009

20 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
21 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
22 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to  
23 § 3.2.6 of the Charter.  
24

25 David R. Fine, City Attorney

26 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney Date: \_\_\_\_\_