



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: April 14, 2015

TO: Mayor and Councilmembers

FROM: City Attorney's Office

SUBJECT: Sidewalk Behavior and Panhandling Ordinances

RECOMMENDATION: That Council introduce and subsequently adopt, by reading of title only, the following Ordinance Committee recommended ordinances:

- A. An Ordinance Of The Council Of The City Of Santa Barbara Amending Section 2.28.030 Of The Santa Barbara Municipal Code To Grant The Library Director The Authority To Promulgate And Post Facility Specific Regulations;
- B. An Ordinance Of The Council Of The City Of Santa Barbara Amending Title 9 Of The Municipal Code By Adding Chapter 9.07 To Prohibit Urinating Or Defecating In Public;
- C. An Ordinance Of The Council Of The City Of Santa Barbara Amending Section 9.48.010 Of The Municipal Code Regarding Commercial Use Of City Streets To Prohibit The Use Of Public Street Furniture As A Venue For Selling Or Offering For Donation;
- D. An Ordinance Of The Council Of The City Of Santa Barbara Amending Section 9.50.010 Of The Santa Barbara Municipal Code To Prohibit Active Panhandling In Specified Locations;
- E. An Ordinance Of The Council Of The City Of Santa Barbara Amending Section 9.97.010 Of The Santa Barbara Municipal Code Regarding Sitting Or Lying On Sidewalks And Paseos Along Certain Downtown Portions Of State Street; and
- F. An Ordinance Of The Council Of The City Of Santa Barbara Amending Section 9.98.010 Of The Santa Barbara Municipal Code Regarding Pedestrians Blocking Public Sidewalks.

EXECUTIVE SUMMARY:

The Council authorized the Ordinance Committee to consider a series of proposed updates to various sidewalk behavior and panhandling ordinances. The Ordinance Committee met three times and recommended approval of the attached package of ordinance updates.

DISCUSSION:

Background

On April 22, 2014, Council considered a request from Councilmembers Hotchkiss and Rowse regarding the "Sit-Lie and Abusive Panhandling Ordinance." (Attachment "A.") Council voted unanimously (6-0, Francisco absent) to refer the matter to the Ordinance Committee for further consideration and review. The request included:

- Expanding the 7:00 a.m. to 9:00 p.m. hours of the current Sit/Lie prohibition;
- Adding a prohibition on sitting, standing or lying down upon any planting, railing or statue placed or installed on a public sidewalk;
- Expanding the "active" panhandling prohibition near ATM's from 25 feet to 80 feet, subject to constitutional analysis by the City Attorney;
- Expanding the "active" panhandling prohibition to other areas where there are captive audiences, such as buses and other public transportation vehicles;
- Prohibiting urinating or defecating in public;

The request also suggested directing the City Attorney to undertake research and report back to the Ordinance Committee (Council Members Rowse, Hotchkiss and Murillo) on the legal feasibility of adding to the municipal code the following considerations:

- A prohibition on groups of people congregating in a manner that blocks the free movement of pedestrian traffic on our downtown sidewalks;
- A prohibition on the use of public benches and street furniture for the storage, sale or display of merchandise or personal items;
- A prohibition on active panhandling within a prescribed distance of a queue of persons waiting to gain admission to a place of business and outdoor dining areas;

On June 10, 2014, the Ordinance Committee considered the matter and directed the City Attorney to return with proposed ordinances and regulations on these subjects. The Committee provided the following directions:

- Extend the downtown State Street "sit-lie" prohibition, which currently applies from 7 a.m. to 9 p.m., until 2 a.m. The Committee noted that the purpose of the sidewalk is to provide safe and unobstructed pedestrian access "from point A to point B." The time extension was requested in order to avoid ongoing conflicts between late night entertainment patrons and use of the sidewalk. The Committee also noted that the police would be aided by limiting the need to monitor whether someone who was down on the sidewalk near a bar or club was incapacitated or in need of assistance.
- Extend the State Street "sit-lie" prohibition to include railings, statues, sculptures and planter areas within the designated blocks of downtown State Street.
- Consider an 80 foot "no active panhandling" zone around ATM's.
- Prohibit active panhandling on buses or other public transportation vehicles.
- Prohibit urinating or defecating in public.

- Prohibit street or sidewalk obstruction by congregations of people.
- Prohibit the use of street furniture to display goods for sale or offering for donation.
- Prohibit active panhandling within 25 feet of outdoor dining areas and queues of persons waiting to gain admission to a place of business or vehicle, or waiting to purchase an item or admission ticket.
- Authorize the Library Director to promulgate regulations for the use of library facilities.

On October 21, 2014, the Ordinance Committee met and heard extensive public testimony (16 speakers) on the ordinance amendments reflecting the June 10 directions. The Committee then continued the matter for deliberation on October 28. After deliberation, the Committee made the following recommendations to Council:

- Approve the prohibition on urinating or defecating in public. 3-0. Proposed SBMC § 9.07.010 -- Attachment 1.
- Approve the prohibition the use of street furniture to display goods for sale or offering for donation. 3-0. SBMC § 9.48.010 as amended, -- Attachment 2.
- Approve the prohibition on active panhandling within 25 feet of outdoor dining areas and admission queues and on buses or other public transportation vehicles. 3-0. SBMC § 9.50.030 as amended -- Attachment 3.
- Approve the prohibition on active panhandling within 50 feet of ATMs (reduced from June 80 foot proposal). 2-1, Murillo opposed. SBMC § 9.50.030 as amended -- Attachment 3.
- Approve extending the downtown State Street sit-lie prohibition from 9 p.m. to 2 a.m. 2-1 Murillo opposed. SBMC § 9.97.010 as amended -- Attachment 4.
- Approve extending the sit-lie prohibition to include railings, statues, sculptures and planter areas. 2-1 Murillo opposed. SBMC § 9.98.010 A. as amended -- Attachment 5.
- Approve the updated prohibition on congregations of people obstructing the sidewalk, provided the police have first ordered the group to disperse because of an immediate threat to public safety. 3-0. SBMC § 9.98.010 A. as amended -- Attachment 5.
- Approve the authorization for the Library Director to promulgate facility use regulations. 3-0. SBMC § 2.28.030 as amended Attachment 6.

The Attachments 1 through 6 implement the Ordinance Committee's recommendations to Council.

Analysis

Review of the June 10th and October 21st 2014 Ordinance Committee Reports

The attached June 10 and October 21, 2014 reports from this office analyze the serious legal concerns raised by the proposed ordinance amendments. (Exhibits 7 and 8.) In short, many of the proposals implicate First Amendment speech and Eighth Amendment cruel and unusual punishment issues. Whether the ordinances will survive constitutional scrutiny depends upon many factors, as outlined in the earlier reports.

June 10th Report

As described in the italicized quote from Exhibit 7 below, it is very important that Council focus on and specifically identify the significant governmental interests it wishes to further so that the regulations can be appropriately tailored to meet Santa Barbara's needs. The City has a significant governmental interest, for example, in avoiding traffic congestion, public safety, avoiding visual clutter, and crowd control. Council needs to articulate the legitimate interests it seeks to protect and further with these regulations.

By way of contrast, the City does not have a legitimate governmental interest in, for example, taking actions to suppress the 1st Amendment rights of the homeless. We mention this so directly because, as did the Ordinance Committee, Council will have to sift through public comments that may not recognize or respect the constitutional rights of all segments of the community. Evolving case law teaches that the Council should distance itself from uninformed public commentary when considering regulations that impact 1st Amendment interests.

As we put it on June 10th:

"The Council may generally enact reasonable time, place and manner restrictions upon constitutionally protected speech (such as begging for alms or panhandling), provided that the regulations are content-neutral, narrowly drawn, necessary to further a significant government interest, and allow for ample alternative channels for communication.

Content neutrality is critical. Accordingly, objections to panhandling or panhandlers may not be used to justify regulations:

"The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989).

And, there must be “no evidence that the city adopted the ordinance because of a disagreement with the message” Honolulu Weekly, Inc. v. Harris, 298 F.3d 1037, 1044 (9th Cir. 2002).

Regulations must also be narrowly drawn or “tailored.” However, the courts are clear that:

“‘Narrow tailoring’ does not require the government to adopt the ‘least restrictive or least intrusive means of serving the statutory goal’ when the regulation does not completely foreclose any means of communication. The requirement that the regulation be ‘narrowly tailored’ will be met ‘so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation’ and the regulation is not ‘substantially broader than necessary to achieve the government’s interest.’” Honolulu Weekly, Inc. v. Harris, 298 F.3d 1037, 1045 (9th Cir. 2002), citations omitted.

The Ordinance Committee should also consider and describe the significant governmental interests it wishes to further so that the regulations can be appropriately tailored to meet Santa Barbara’s needs. The City has a significant governmental interest, for example, in traffic congestion, public safety, avoiding visual clutter, and crowd control. As the United States Supreme Court has put it:

“Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement.” Cox v. State of La., 379 U.S. 536, 554-55 (1965).

Ample alternative channels of communication must also be left open. This means that it will be necessary to do relatively precise mapping of the City’s downtown core areas in order to determine whether expanded “place” regulations – like expanding the ATM panhandling prohibition from 25 to 80 feet – leave open ample alternative channels for communication.

With respect to sitting and lying down regulations, Eighth Amendment cruel and unusual punishment concerns may arise when insufficient shelter space is available and an ordinance criminalizes behavior such as sitting, lying, or sleeping at night while being involuntarily homeless. The Ordinance Committee should be cautious to take these concerns into account as it seeks legal guidance on potential ordinance changes.”

As quoted above, we advised the Ordinance Committee to direct preparation of detailed maps depicting the new areas in which active panhandling is to be prohibited. The purpose of these maps, attached as Exhibit 9, is to allow the Council to consider whether ample alternative channels of communication exist for protected speech (like active panhandling). The maps have been updated to reflect the Ordinance Committee’s rejection of a prohibition on active panhandling within 80 feet of ATMs.

Police Department testimony suggested that 80 feet was unnecessarily large for public safety but that 25 feet was too small. The Ordinance Committee settled on 50 feet, 2-1 Murillo opposed.

October 21st Report

Our October 21, 2014 report provided a point-by-point legal analysis of the standards governing Council's actions on the various proposed code amendments. It is quoted below:

“Prohibition against Urinating or Defecating in Public

This proposed code amendment is a straightforward exercise of the City's police power to protect the public health, safety, and welfare. There are ample public toileting facilities in Santa Barbara.

Prohibition on Using Public Street Furniture for the Display of Wares for Sale or Donation

*Restricting the sale of goods in public can have First Amendment implications when goods bearing expressive messages, such as printed T-shirts or literature, are being sold. In *One World One Family Now v. City and County of Honolulu* (9th Cir. 1996) 76 F.3d 1009, Honolulu was faced with objections from visitors and local residents, as well as merchants, who complained that street T-shirt sales on one of the busiest commercial streets in Waikiki created a sidewalk obstruction and visual eyesore, and competed unfairly with “brick and mortar” stores. The city began enforcing a local ordinance that banned the sale of all “goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services ... upon the public streets, alleys, sidewalks, malls, parks, beaches and other public places in Waikiki.” (Id. at p.1011.) After being threatened with prosecution, the plaintiffs (who sold printed T-shirts with messages like “TAKE IT EASY MEDITATE HANG LOOSE HAWAII” and “WAIKIKI HAWAII HARINAM”) sued under the federal civil rights law.*

The Ninth Circuit Court of Appeals began its analysis by acknowledging that “when the sale of merchandise bearing political, religious, philosophical or ideological messages is ‘inextricably intertwined’ with other forms of protected expression (like distributing literature and proselytizing), the First Amendment applies.” (Id. at p.1012.) The Court found that the T-shirts in question met that standard; thus the sales activities were entitled to First Amendment protection.

The Court went on to apply the familiar “time, place and manner” rules:

“We use the standard governing time, place and manner restrictions. Such restrictions are valid if they (1) are content-neutral; (2) are narrowly tailored to serve a significant governmental interest; and (3) leave open ample alternative channels of communication.” (Ibid.)

As to content neutrality, the Court held that:

“A speech restriction is content-neutral if it is “justified without reference to the content of the regulated speech.” “A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” The test is whether the government has adopted the restriction “because of disagreement with the message it conveys.” (Ibid; citations omitted, emphasis added.)

The Ordinance Committee’s proposal to ban the sale of all goods from public street furniture does not reflect disagreement with any particular speech message because it is generally applicable to all goods.

The Court also recognized three significant governmental interests that the sales ban legitimately promoted, each of which applies to a tourism-focused city like Santa Barbara as well as it did to Honolulu’s Waikiki: “(1) ‘maintaining the aesthetic attractiveness of Waikiki,’ (2) ‘promoting public safety and the orderly movement of pedestrians,’ and (3) ‘protecting the local merchant economy.’” (Ibid.)

Finally, the Court concluded that:

“Honolulu’s peddling ordinance also leaves open ample alternative channels of communication. The ordinance forecloses one narrow form of expression—sidewalk sales of message-bearing merchandise—and leaves the plaintiffs free to disseminate and seek financial support for their views through “myriad and diverse” alternative channels, such as handing out literature, proselytizing or soliciting donations. In addition, plaintiffs’ volunteers may hand out free T-shirts to passers-by, or mingle with Waikiki’s tourist throngs wearing T-shirts (thereby acting as human billboards). Plaintiffs may also sell T-shirts through local retail outlets or by opening their own stores, so long as they comply with the regulations generally applicable to merchants.” (Id. at p.1014.)

Based upon the One World One Family Now case, we believe Santa Barbara may legitimately include public street furniture among the locations where street vending is prohibited.

Expanded Safety Zones around Sensitive Locations Where Captive Audiences Feel Threatened By Active Panhandling

On June 10, 2014, the Ordinance Committee expressed serious concerns about safety around ATMs, movie queues, public benches, and outdoor dining areas because these are locations where persons who are being solicited are confined to restricted areas as captive audiences. In those situations, the persons being solicited are most likely to experience a sense of powerlessness, and to be intimidated by an unwanted effort by a panhandler to solicit donations. The Committee requested further analysis of adding or expanding safety buffer zones (within which panhandling would be prohibited) around these sensitive locations.

There is little doubt that valid time, place and manner regulations may prohibit abusive panhandling altogether, while prohibiting and allowing active or passive panhandling in specified locations only. The question for the Ordinance Committee and Council is whether the areas where active and passive panhandling would be prohibited – the expansion of the 25-foot buffer around ATMs to 80 feet, and the addition of a 25-foot buffer around movie queues, public benches, and outdoor dining areas – would leave open ample alternative channels for communication. This analysis is fundamentally data-driven.

We have approached the issues empirically by mapping the downtown core business areas and the areas affected by the proposed expanded safety zones. Over the summer, the City's GIS staff mapped the locations of ATMs, movie queues, public benches, outdoor dining areas and paseos on the State Street and Milpas Street corridors as they are currently regulated by the City. These facilities and locations were chosen because the Ordinance Committee identified them as locations where an additional safety buffer might be needed to address the recent increase in problematic panhandling. An overview map of State Street is attached as Exhibit "6" and more detailed maps of each block of State Street (400 to 1200) are provided as Exhibits "7" through "15."

The maps show that the proposed safety buffers have the effect of prohibiting panhandling in many areas of State Street. The Ordinance Committee should carefully consider these maps and determine whether ample alternative areas are provided for protected speech activities including panhandling.

Extending the Existing "Sit/Lie" Prohibition on State Street from 7:00 A.M. to 2:00 A.M. of the Following Day, Rather than 9:00 P.M.

The major legal issues presented are whether extending the hours of the existing sit/lie prohibition from 9:00 p.m. to 2:00 a.m. on State Street implicates either First Amendment or Eighth Amendment (cruel and unusual punishment) concerns.

The First Amendment concerns are familiar, and for the purposes of this analysis we assume without conceding that expressive conduct may be implicated by the act of

*sitting or lying down upon a sidewalk. Using the time, place and manner regulatory test, the proposed extension to 2:00 a.m. is clearly content-neutral. The significant governmental interests include the need for free pedestrian passage on crowded State Street, in this case focusing upon the late evening hours when the vibrant State Street nightlife scene causes conflict between revelers walking or milling about and those who might seek to sit or lie down upon the sidewalks. Because the regulations cover only the busiest portion of the busiest street in Santa Barbara, we believe ample alternative locations are available to sit or lie down on the public sidewalk. (See *Roulette v. City of Seattle* (9th Cir. 1996) 97 F.3d 300.)*

*The Eighth Amendment cruel and unusual punishment concerns are less familiar, and arise out of the potential disparate impact sit/lie regulations may have upon the homeless population. These concerns were noted in a now-vacated Ninth Circuit case called *Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118 (the opinion was withdrawn after the City settled the lawsuit). In *Jones*, homeless individuals brought a federal civil rights action seeking limited injunctive relief against enforcement of a Los Angeles ordinance that criminalized sitting, lying, or sleeping on public streets and sidewalks at all times and in all places within City. The plaintiffs argued, successfully, that the ordinance constituted cruel and unusual punishment because penalized homeless persons were on the streets due to the lack of available shelter space – effectively criminalizing their status as homeless rather than any distinct criminal conduct.*

The Court began its analysis by declaring Los Angeles' ordinance "one of the most restrictive municipal laws regulating public spaces in the United States," noting that unlike Santa Barbara's ordinance, the L.A. regulation applied citywide and at all hours of the day or night. The Court went on to explain that:

*"The City could not expressly criminalize the status of homelessness by making it a crime to be homeless without violating the Eighth Amendment, nor can it criminalize acts that are an integral aspect of that status. Because there is substantial and undisputed evidence that the number of homeless persons in Los Angeles far exceeds the number of available shelter beds at all times, including on the nights of their arrest or citation, Los Angeles has encroached upon Appellants' Eighth Amendment protections by criminalizing the unavoidable act of sitting, lying, or sleeping at night while being involuntarily homeless. A closer analysis of *Robinson and Powell* instructs that the involuntariness of the act or condition the City criminalizes is the critical factor delineating a constitutionally cognizable status, and incidental conduct which is integral to and an unavoidable result of that status, from acts or conditions that can be criminalized consistent with the Eighth Amendment." (*Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118, 1132 vacated, (9th Cir. 2007) 505 F.3d 1006; emphasis added.)*

Importantly, the Court concluded by stating that:

“By our decision, we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets of Los Angeles at any time and at any place within the City. All we hold is that, so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds, the City may not enforce section 41.18(d) at all times and places throughout the City against homeless individuals for involuntarily sitting, lying, and sleeping in public.” (Jones v. City of Los Angeles (9th Cir. 2006) 444 F.3d 1118, 1138 vacated, (9th Cir. 2007) 505 F.3d 1006; emphasis added.)

Jones is clearly distinguishable from Santa Barbara’s ordinance in that the City’s ordinance applies only to a limited portion of one street during limited hours. Nonetheless, if the Court is persuaded that Santa Barbara’s ordinance is aimed at homelessness, rather than late night street obstruction of State Street revelers and daytime obstruction of tourists and residents in the City’s core commercial area, the City may face a legal challenge under the theory that extending the sit/lie ban until 2:00 a.m. inappropriately burdens those who have nowhere else to sleep. It is important to note that Jones is not the law, but only a potential insight into the Ninth Circuit’s current thinking.

Revising the Prohibition on Pedestrians Blocking Sidewalks to Include Congregated Groups of People

Laws prohibiting congregations of people in public forums, such as sidewalks, squarely implicate First Amendment speech and assembly rights. The initial question presented is whether the City’s existing circa-1966 regulation meets current constitutional scrutiny.

Santa Barbara Municipal Code section 9.98.010 provides as follows:

9.98.010 Unlawful.

No person shall stand or sit in or upon any street, sidewalk or crosswalk in the City in any manner so as to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians. (Ord. 3162 §1, 1966.)

While simple enough on its face, this ordinance raises serious First Amendment considerations, particularly if it is revised to address congregations of people on sidewalks at any time or place, because it would then broadly prohibit even speech-related activities, such as peaceful protests or picketing, which might “annoy” pedestrians or “hinder” their free passage.

The United States Supreme Court has long held that:

“Access to the ‘streets, sidewalks, parks, and other similar public places . . . for the purpose of exercising (First Amendment rights) cannot constitutionally be denied broadly . . .’ Free expression ‘must not, in the guise of regulation, be abridged or denied.’” (Grayned v. City of Rockford (1972) 408 U.S. 104, 117.)

On the other hand, focused restrictions on the time, place and manner of street (or sidewalk) protests can be upheld:

“The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations.” (Cox v. State of La. (1965) 379 U.S. 536, 554-55; emphasis added.)

Santa Barbara’s existing Chapter 9.98 may be too broad to meet constitutional requirements because, on its face, it would prohibit a large array of constitutionally protected speech activities, such as peaceful protest and picketing.

This conclusion raises the next question, namely, can SBMC Chapter 9.98 be amended to narrow its reach to fit within constitutional dimensions. We would advise amending the existing ordinance to read as follows:

9.98.010 Unlawful Street or Sidewalk Obstruction.

No person shall stand, or sit, or congregate in or upon any street, sidewalk or crosswalk in the City in any manner so as with the intent to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians, or to block the entrance to a building, and refuse to disperse after having been ordered to do so by the police when the police reasonably believe an immediate threat to public safety is present.

~~9.98.020 Parade Viewing Excepted.~~

~~This chapter shall not apply to persons engaged in viewing a parade duly and regularly permitted by the City.~~

The proposed amendment adds an intent requirement and a requirement that the police order dispersal only in those situations where the sidewalk or street obstruction threatens public safety. This will allow the police to stop violent protests, which are not protected by the First Amendment, while still avoiding interference with constitutionally-protected speech activities on the streets and sidewalks. We also advise repealing SBMC section 9.98.020, which creates an exemption for persons viewing a parade. This exemption is unnecessary given the proposed public safety limitation on the ordinance, and may appear to be a difficult-to-defend content-based restriction.

With these amendments, we believe Chapter 9.98 may minimize First Amendment concerns while providing a useful tool to deal with persons who intentionally obstruct the sidewalks or streets, and who refuse to disperse when ordered to do so by the police in order to mitigate immediate threats to public safety.

Delegating the Library Director the Authority to Promulgate Regulations for the Use of the Libraries, Including the Central Library and its Outdoor Plaza

The City Council has the police power to regulate the use of public facilities including the libraries. This power may be delegated to the Library Director. The proposed ordinance (Exhibit 5A) grants the Library Director the authority to promulgate criminally enforceable regulations that would govern behavior at the City's library facilities."

CONCLUSION:

Council should carefully consider the accompanying package of proposed sidewalk behavior and panhandling ordinances. We will be available to address the numerous legal issues implicated by these proposed actions.

- ATTACHMENT(S):**
- A. April 22, 2014 Memo-Council Members Hotchkiss and Rowse
 - 1. Proposed SBMC § 9.07.010
 - 2. SBMC § 9.48.010 as amended
 - 3. SBMC § 9.50.030 as amended
 - 4. SBMC § 9.97.010 as amended
 - 5. SBMC § 9.98.010 A. as amended
 - 6. SBMC § 2.28.030 as amended
 - 7. Council Agenda Report dated June 10, 2014
 - 8. Council Agenda Report dated October 21, 2014
 - 9. State Street Active Panhandling Restriction Maps

PREPARED BY: Ariel Calonne, City Attorney

SUBMITTED BY: Ariel Calonne, City Attorney

APPROVED BY: City Administrator's Office



Agenda Item No. 9

File Code No. 520.04

CITY OF SANTA BARBARA

ATTACHMENT A

COUNCIL AGENDA REPORT

AGENDA DATE: April 22, 2014

TO: Mayor and Councilmembers

FROM: City Administrator's Office

SUBJECT: Request from Councilmember Hotchkiss and Councilmember Rowse Regarding The Sit-Lie And Abusive Panhandling Ordinance

RECOMMENDATION:

That Council consider the request from Councilmember Hotchkiss and Councilmember Rowse regarding a referral to the Ordinance Committee on the Sit-Lie and Abusive Panhandling Ordinance.

DISCUSSION:

Attached is a memorandum from Councilmember Hotchkiss and Councilmember Rowse requesting that Council receive a report on discussions with the downtown business community regarding specific proposals to update the Sit-Lie and Abusive Panhandling Ordinance, consider enacting a new ordinance prohibiting urination and defecation in public, and refer the matter to the Ordinance Committee for further consideration and review.

ATTACHMENT: Memorandum from Councilmember Hotchkiss and Councilmember Rowse

PREPARED BY: Jennifer Jennings, Administrator's Office Supervisor

SUBMITTED BY: Jim Armstrong, City Administrator

APPROVED BY: City Administrator's Office



City of Santa Barbara
 Mayor & Council Office

Memorandum

DATE: April 3, 2014

TO: James L. Armstrong, City Administrator

FROM: Council Members Frank Hotchkiss and Randy Rowse

SUBJECT: Sit-Lie and Abusive Panhandling Ordinance Referral to Ordinance Committee

- Summary of Information to be Presented to the City Council

Receive a report on discussions with the downtown business community regarding specific proposals to update the Sit-Lie and Abusive Panhandling Ordinances. Consider enacting a new ordinance prohibiting urinating or defecating in public. Refer the matter to the Ordinance Committee for further consideration and review.

- Statement of Specific Action the Council will be asked to take

The municipal code currently prohibits sitting or lying down on public sidewalks and paseos along the first thirteen blocks of State Street during the hours between 7:00 a.m. and 9:00 p.m. We would propose expanding the hours of the prohibition and adding a prohibition on sitting, standing or lying down upon any planting, railing or statue placed or installed on a public sidewalk.

The municipal code currently prohibits abusive panhandling anywhere in the City. "Active" panhandling – meaning a verbal (oral) request seeking a donation of money or other item of value is prohibited in certain locations only. For example, active panhandling is currently prohibited within 25 feet of any ATM. We would propose increasing this area to approximately 80 feet, subject to analysis by staff of the impacts on the constitutionally-required alternative locations for solicitation speech. We would also propose expanding the ban on solicitation to busses and other public transportation vehicles.

Neither the municipal code nor state law directly prohibits urinating or defecating in public. While this behavior may be prosecuted under state law as a nuisance, this form of action constitutes a misdemeanor that falls to the District Attorney's Office for prosecution. We propose adding a prohibition on urinating or

defecating in public to the municipal code in order to facilitate enforcement against this nuisance behavior.

Finally, we would like Council to direct the City Attorney to undertake research and report back to the Ordinance Committee on the legal feasibility of adding to the municipal code the following considerations:

- A prohibition on groups of people congregating in a manner that blocks the free movement of pedestrian traffic on our downtown sidewalks;
- A prohibition on the use of public benches and street furniture for the storage, sale or display of merchandise or personal items;
- A prohibition on active panhandling within a prescribed distance of a queue of persons waiting to gain admission to a place of business and outdoor dining areas.
- A requirement for appropriate signage to inform the public of these regulations

We believe all of these issues should be referred to the Ordinance Committee for further consideration and review. We also believe the Ordinance Committee should hear from our Police Department on current enforcement issues that might be further addressed.

- Statement of the Reasons Why it is Appropriate and Within the Jurisdiction of the Council to Consider this Subject Matter and to Take the Requested Action

Improving the quality of life for all Santa Barbara residents is a crucial function of the City Council. We believe our modest proposals will do just that.

cc: Mayor and Council
Cam Sanchez, Police Chief
Ariel Calonne, City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF SANTA BARBARA AMENDING
TITLE 9 OF THE MUNICIPAL CODE BY
ADDING CHAPTER 9.07 TO PROHIBIT
URINATING OR DEFECATING IN PUBLIC

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS
FOLLOWS:

SECTION 1. Title 9 of the Santa Barbara Municipal Code is amended by adding Chapter
9.07 which reads as follows:

Chapter 9.07 Urinating or Defecating in Public.

9.07.010 Urinating or Defecating in Public Prohibited.

No person shall defecate or urinate in public or upon any street, sidewalk, or other public
place.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF SANTA BARBARA AMENDING
SECTION 9.48.010 OF THE MUNICIPAL CODE
REGARDING COMMERCIAL USE OF CITY
STREETS TO PROHIBIT THE USE OF PUBLIC
STREET FURNITURE AS A VENUE FOR
SELLING OR OFFERING FOR DONATION

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS
FOLLOWS:

SECTION 1. FINDINGS AND PURPOSES.

The City Council finds that these regulations are necessary to maintain the aesthetic attractiveness of Santa Barbara which depends heavily on its tourism-based economy for its financial vitality. These regulations are also necessary in order to promote public safety and the orderly movement of pedestrians, particularly in the crowded downtown core, where on-street or on-sidewalk vending will present a substantial obstruction to pedestrian and vehicular traffic. Finally, these regulations are essential to protect the local merchant economy which would be undersold and threatened economically by competition from street vendors who do not pay rent or other overhead expenses.

SECTION 2. Section 9.48.010 of Chapter 9.48 of Title 9 of the Santa Barbara Municipal Code is amended to read as follows:

9.48.010 Commercial Use of City Streets.

A. GENERALLY. It shall be unlawful for any person, whether acting as principal, agent, clerk, employee, or otherwise, to use any public street, public parking lot, public street furniture, or public sidewalk in the City for the purpose of selling, vending,

offering for donations, offering for sale or soliciting or receiving orders for the sale of any goods, wares or merchandise.

B. SALE OF NEWSPAPERS. Notwithstanding subsection A hereof, nothing herein shall prohibit any person from selling or offering for sale newspapers, magazines and periodicals upon any of the public sidewalks of the City in the present customary and usual manner of selling and offering for sale of newspapers, magazines, and periodicals in the City.

C. EXEMPTION FOR SIDEWALK SALES, FARMERS' MARKETS, AND SIDEWALK CAFE TABLES. Notwithstanding subsection A hereof, an individual or an organization may, upon the issuance of a permit by the Director of Public Works in accordance with the requirements of this Chapter and the administrative regulations adopted pursuant hereto, use a public street or sidewalk in the City for the following limited purposes:

1. Sidewalk Sales. A retail business licensed to do business at a location within the City may conduct a sale of merchandise on a City sidewalk under the following conditions:

- a. The sale occurs only on a public sidewalk immediately adjacent to the retail business;
- b. The retail business does not conduct such sidewalk sales for more than a total of ten (10) days for each calendar year provided, however, that those businesses within a two (2) block radius of a construction project which impacts pedestrian or vehicular access to the City block within which the business is located for a period exceeding fourteen (14) consecutive days may be allowed up to twenty (20) days for sidewalk sales during the year in which the construction project is undertaken.

2. Farmers' Markets. An individual or an organization may use a public street or City parking lot for the purpose of conducting a Certified Farmers' Market [as defined and provided for in Title 3, Chapter 3 of the California Code of Regulations] under the following conditions:

a. The merchandise offered for sale at the Farmers' Market is allowed to be sold at a Certified Farmers' Market;

b. The use of the street or public parking lot is authorized by and pursuant to a written license agreement between the City and the Market sponsor, which license agreement limits the Market to a specified day or days of the week and to certain limited hours;

c. The vendors of merchandise at the Farmers' Market are authorized to conduct such sales by the organization sponsoring the Market and entering into the license agreement with the City.

3. Limited Nonprofit Sidewalk Sales. In connection and concurrent with a Parade or Event (as permitted and defined in Municipal Code Section 9.12.020), which Parade or Event is sponsored by a nonprofit entity (as evidenced by tax-exempt status under state and federal tax laws), a public sidewalk may be used for the limited merchandising of items or services under the following conditions:

a. The sidewalk sales may occur for a period not to exceed five (5) days in any calendar year, and the sales must be concurrent with the associated Parade or Event;

b. The location of any booth or table used by a sidewalk vendor under this subsection shall be at a specific location approved in advance by the City;

c. The net proceeds received by the nonprofit corporation from such sales are to be devoted exclusively for the benefit of the sponsoring nonprofit organization(s);

d. The persons conducting such sales are authorized in writing to do so by the nonprofit organization sponsoring the event;

e. For the purposes of this subsection, the word “concurrent” shall be defined as occurring within the same calendar week (Sunday through Saturday).

4. Sidewalk Sales in Connection with a Reserved Park Event. A public street or sidewalk immediately adjacent to a City park facility may be used for the limited merchandising of items under the following conditions:

a. The person or organization sponsoring the merchandising is a nonprofit entity, and it has reserved the adjacent park facility for an event pursuant to the requirements of Santa Barbara Municipal Code Chapter 15.05 and 15.16; and, event;

b. The sales occur only during the time the park is being used for the reserved event;

c. The persons conducting such sales are authorized in writing to do so by the nonprofit sponsoring the event;

d. The net proceeds received by the nonprofit corporation from such sales are to be devoted exclusively for the benefit of the sponsoring nonprofit organization.

5. Sidewalk Cafe Tables Under Chapter 9.95. For the placement of sidewalk cafe tables in accordance with Santa Barbara Municipal Code Chapter 9.95.

D. SIDEWALK MERCHANDISING REGULATIONS AND PERMITS. The City Administrator, acting by and through the Director of Public Works, is hereby directed to

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prepare an appropriate administrative process (along with related administrative regulations) for the City's acceptance, review, and processing of applications for the issuance of sidewalk merchandising permits, as such permits are allowed by and consistent with the requirements of this Section.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF SANTA BARBARA AMENDING
SECTION 9.50.010 OF THE SANTA BARBARA
MUNICIPAL CODE TO PROHIBIT ACTIVE
PANHANDLING IN SPECIFIED LOCATIONS

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS
FOLLOWS:

SECTION 1. Section 9.50.010 of Chapter 9.50 of Title 9 of the Santa Barbara Municipal Code is amended to read as follows:

9.50.010 Purpose.

In order to protect and promote the rights of the general public to be free from inappropriate conduct and from the ~~potential~~ intimidating physical confrontations ~~sometimes~~ associated with panhandling, the City Council finds that there is a need to adopt a City ordinance which imposes reasonable and specific time, place, and manner limitations on those forms of inappropriate and unlawful conduct which may be associated with ~~aggressive~~ abusive and active panhandling. At the same time, the Council seeks to properly and duly recognize, as well as ~~fully~~ protect to the ~~full~~ fullest extent possible, the First Amendment free speech rights of all concerned.

The Council ~~also~~ finds that balancing the need for public safety with the need to ~~duly~~ protect constitutional rights is especially critical in certain popular retail and visitor-serving areas of the City, ~~such as~~ Specifically, Cabrillo Boulevard, lower Milpas Street, and certain blocks of State Street (those within the City Central Business District) ~~since these areas~~ are popular public gathering spaces and are often crowded with members of the public and visitors to the Santa Barbara area, ~~and since~~ Moreover, these areas provide only limited public amenities, such as

public seating and outdoor dining areas, and members of the public should be free to use those areas without fear of coercive panhandling with its attendant risk of fraud, intimidation and violence. The Council further finds that, because these areas of Santa Barbara often have thousands of visitors each day and because there is limited public seating and gathering areas available within these blocks of these streets, it is necessary and appropriate to provide panhandling regulations which prevent some persons from monopolizing the use of a public bench or a public seating area, as well as nearby sidewalk areas, for active panhandling. There is therefore a necessity for the City Council to adopt ~~City~~ regulations which provide for the shared and reasonable use of these public facilities by all members of the public, especially the elderly and persons with special access needs.

The City Council further finds that panhandling near automated bank teller machines is particularly problematic because persons who use such machines may have large quantities of cash in their possession and generally feel vulnerable to attack or intimidation. Likewise, active panhandling on busses and other forms of public transportation threatens the person being solicited because they are in a confined space with no means of leaving the area in order to avoid being panhandled.

Finally, ~~the~~ The City Council ~~believes~~ finds that these ~~City~~ panhandling regulations will not prevent those persons who wish to ~~properly~~ solicit alms or charitable donations from appropriately using public benches and public seating facilities within these areas of the City for temporary respite purposes, nor will these panhandling regulations impact the content of any protected forms of expressive statements made by a panhandler or otherwise improperly restrict anyone's First Amendment rights.

The City Council also finds that these panhandling regulations have been demonstrated, by careful mapping of the regulated areas which has been considered by Council, to leave open ample alternative locations within the City for active and passive panhandling. Active panhandling on or near public benches and seating areas is prohibited only in the most crowded and intensely used areas of the City's commercial districts, and even with those areas many areas are open for active and passive panhandling.

SECTION 2. Section 9.50.030 of Chapter 9.50 of Title 9 of the Santa Barbara Municipal Code is amended to read as follows:

9.50.030 Abusive Panhandling Prohibited; Specific Locations Where Active Panhandling is Restricted.

A. Abusive Panhandling Prohibited. Abusive Panhandling is unlawful and prohibited entirely within the city of Santa Barbara.

B. Active Panhandling Restricted. Active Panhandling is prohibited when the person being panhandled is in any of the following locations:

1. Waiting at a bus stop;
2. In a vehicle on a public street or alleyway;
3. In a City parking lot or parking structure without regard to whether the person is in a vehicle or not;
4. Within twenty-five feet of an outdoor dining area of a restaurant or other dining establishment serving food for immediate consumption;
5. Within ~~twenty-five~~ fifty feet of an automated bank teller machine; ~~or~~

6. Within twenty-five feet of ~~In~~ a queue of persons waiting to gain admission to a place of business or to a vehicle, or waiting to purchase an item or admission ticket; or

7. On buses or other public transportation vehicles.

9.50.040 Use of Public Benches and Facilities on Certain Streets for Active Panhandling.

Active Panhandling is prohibited while seated on or otherwise using a public bench or seating area (including any landscape planter or other public street furniture which can be sat upon), and within twenty-five feet of such benches and seating areas, within the following areas of the City:

1. **State Street.** On either side of State Street from the 400 block to the 1200 block;
or
2. **Milpas Street.** Either side of Milpas Street from the 00 block South to the 200 block North; or
3. **Cabrillo Boulevard.** Cabrillo Boulevard between Castillo Street and Milpas Street.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF SANTA BARBARA AMENDING
SECTION 9.97.010 OF THE SANTA BARBARA
MUNICIPAL CODE REGARDING SITTING OR
LYING ON SIDEWALKS AND PASEOS ALONG
CERTAIN DOWNTOWN PORTIONS OF STATE
STREET

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS
FOLLOWS:

SECTION 1. FINDINGS AND PURPOSES. Since enactment of the City's original "sit/lie" legislation, the relevant area along State Street has become an even bigger destination for night time entertainment. During late night hours when bar and entertainment venues are very busy, there have been increasing conflicts between such patrons and persons blocking the sidewalks and public paseos. Due to this increasing conflict, the City Council finds it necessary to prohibit sitting or lying down on the few affected blocks of State Street until 2:00 a.m.

SECTION 2. Section 9.97.010 of Chapter 9.97 of Title 9 of the Santa Barbara Municipal Code is amended to read as follows:

9.97.010 Sitting or Lying on Public Sidewalks in Certain Downtown Areas of State Street.

A. Prohibition. No person shall sit or lie down upon a public sidewalk or public paseo, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk or public paseo, during the hours between 7:00 a.m. and ~~9:00 p.m.~~ 2:00 a.m. of the following day along the first thirteen (13) blocks of State Street from Cabrillo Boulevard to and including the 1300 block of State Street.

For the purposes of this subsection (A), the terms "public sidewalk or public paseo" shall also include those public pedestrian sidewalks or public paseos which serve as access to and from State Street and the City parking facilities adjacent to State Street within the designated blocks, which shall also specifically include the area known as "Storke Placita," as well as the railings, statues, sculptures, or planter areas within the designated blocks.

B. Exceptions. The prohibitions of Subsection A shall not apply to any person or persons:

1. Who is sitting or lying down on a public sidewalk due to a medical emergency;
2. Who, as the result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk;
3. Who is operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to a street use permit issued pursuant to Chapter 9.95 of this Title or who is participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted on public sidewalk pursuant to a street use or other applicable parade permit issued by the City in accordance with this Code.

Nothing in any of these exceptions shall be construed to permit any conduct which is otherwise prohibited by this Code.

C. Scope. Nothing herein shall be deemed to apply the requirements of subsection (A) to the following:

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ATTACHMENT 4

1. A person who is sitting on a chair,~~wall~~, or bench located on the public sidewalk which is supplied by a public agency or by the abutting private property owner for such purposes or;

2. A person who is sitting on a public sidewalk within a bus stop zone while waiting for public transportation.

D. Prior Warning. No person shall be prosecuted for a violation of this Chapter unless the person engages in conduct prohibited by this Chapter after having been notified by a law enforcement officer that the conduct violates this Chapter.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF SANTA BARBARA AMENDING
SECTION 9.98.010 OF THE SANTA BARBARA
MUNICIPAL CODE REGARDING
PEDESTRIANS BLOCKING PUBLIC
SIDEWALKS

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS
FOLLOWS:

SECTION 1. Section 9.98.010 of Chapter 9.98 of Title 9 of the Santa Barbara Municipal
Code is amended to read as follows:

9.98.010 Unlawful Street or Sidewalk Obstruction.

No person shall stand, or sit, or congregate in or upon any street, sidewalk or crosswalk
in the City ~~in any manner so as~~ with the intent to hinder or obstruct the free passage of
pedestrians thereon, or to annoy or molest such pedestrians, or to block the entrance to a
building, and refuse to disperse after having been ordered to do so by the police when the police
reasonably believe an immediate threat to public safety is present.

~~9.98.020 Parade Viewing Excepted.~~

~~This chapter shall not apply to persons engaged in viewing a parade duly and regularly permitted
by the City.~~

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF SANTA BARBARA AMENDING
SECTION 2.28.030 OF THE SANTA BARBARA
MUNICIPAL CODE TO GRANT THE LIBRARY
DIRECTOR THE AUTHORITY TO
PROMULGATE AND POST FACILITY
SPECIFIC REGULATIONS

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS
FOLLOWS:

SECTION 1. Section 2.28.030 of Chapter 2.28 of Title 2 of the Santa Barbara Municipal Code is amended to read as follows:

2.28.030 Duties of Director.

The Library Director shall be responsible for the supervision and control of all personnel, materials, and equipment assigned to the Department and for the performance of the functions of the Department, subject to the supervision of the City Administrator. The Library Director shall have the authority to promulgate and post facility specific regulations. No person shall violate any such regulations. Any person found to be in violation of a facility specific regulation promulgated by the Library Director shall be subject to removal from the facility upon request of the Library Director or his or her designee. Such request, when made to law enforcement after refusal to comply, shall be a basis for forcible removal, citation or arrest.



CITY OF SANTA BARBARA

ATTACHMENT 7

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: June 10, 2014

TO: Ordinance Committee

FROM: Ariel Pierre Calonne, City Attorney

SUBJECT: State Street Sidewalk Behavior And Panhandling Ordinances

RECOMMENDATION: That the Ordinance Committee:

- A. Review certain proposed changes to the State Street Sitting and Lying Down Ordinance and the Abusive Panhandling Ordinance; and
- B. Consider enacting an ordinance to prohibit public urination and defecation.

DISCUSSION:

Background

On April 22, 2014, the City Council voted unanimously (6-0, Francisco absent) to refer to the Ordinance Committee for further consideration and review issues raised in a memorandum from Councilmembers Hotchkiss and Rowse. (See April 3, 2014 Memorandum included as Attachment 1.) The memorandum raises the possibility of taking the following specific actions:

- Expanding the 7:00 a.m. to 9:00 p.m. hours of the current Sit/Lie prohibition
- Adding a prohibition on sitting, standing or lying down upon any planting, railing or statue placed or installed on a public sidewalk
- Expanding the "active" panhandling prohibition near ATM's from 25 feet to 80 feet, subject to constitutional analysis by the City Attorney
- Expanding the "active" panhandling prohibition to other areas where there are captive audiences, such as busses and other public transportation vehicles
- Prohibiting urinating or defecating in public

The relevant existing Santa Barbara Municipal Code excerpts are included as Attachment 2 to this report.

The Council memorandum also suggested directing the City Attorney to undertake research and report back to the Ordinance Committee on the legal feasibility of adding to the municipal code the following considerations:

- A prohibition on groups of people congregating in a manner that blocks the free movement of pedestrian traffic on our downtown sidewalks
- A prohibition on the use of public benches and street furniture for the storage, sale or display of merchandise or personal items
- A prohibition on active panhandling within a prescribed distance of a queue of persons waiting to gain admission to a place of business and outdoor dining areas

The Ordinance Committee should give direction on which of the above-referenced ideas it wishes to have researched further. The Ordinance Committee may also wish to add other suggestions after hearing from the public. The City Attorney will prepare draft ordinance amendments in conjunction with the research.

Legal Framework

The Council may generally enact reasonable time, place and manner restrictions upon constitutionally protected speech (such as begging for alms or panhandling), provided that the regulations are content-neutral, narrowly drawn, necessary to further a significant government interest, and allow for ample alternative channels for communication.

Content neutrality is critical. Accordingly, objections to panhandling or panhandlers may not be used to justify regulations:

“The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

Again, there must be “no evidence that the city adopted the ordinance because of a disagreement with the message” *Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1044 (9th Cir. 2002).

Regulations must also be narrowly drawn or “tailored.” However, the courts are clear that:

“‘Narrow tailoring’ does not require the government to adopt the ‘least restrictive or least intrusive means of serving the statutory goal’ when the regulation does not completely foreclose any means of communication. The requirement that the regulation be ‘narrowly tailored’ will be met ‘so long as the . . . regulation promotes a substantial government interest that

would be achieved less effectively absent the regulation' and the regulation is not 'substantially broader than necessary to achieve the government's interest.'" *Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1045 (9th Cir. 2002), citations omitted.

It is important that the Ordinance Committee consider and describe the significant governmental interests it wishes to further so that the regulations can be appropriately tailored to meet Santa Barbara's needs. The City has a significant governmental interest, for example, in traffic congestion, public safety, avoiding visual clutter, and crowd control. As the United States Supreme Court has put it:

"Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement." *Cox v. State of La.*, 379 U.S. 536, 554-55 (1965).

Ample alternative channels of communication must also be left open. This means that it will be necessary to do relatively precise mapping of the City's downtown core areas in order to determine whether expanded "place" regulations – like expanding the ATM panhandling prohibition from 25 to 80 feet – leave open ample alternative channels for communication.

With respect to sitting and lying down regulations, Eighth Amendment cruel and unusual punishment concerns may arise when insufficient shelter space is available and an ordinance criminalizes behavior such as sitting, lying, or sleeping at night while being involuntarily homeless. The Ordinance Committee should be cautious to take these concerns into account as it seeks legal guidance on potential ordinance expansion or other changes.

Next Steps

The Ordinance Committee direction will be used by the City Attorney to conduct detailed research into the legal feasibility of the various proposals. This will include downtown mapping prepared with the assistance of the Public Works and Community Development Departments. The City Attorney will report back to the Ordinance Committee with a comprehensive legal analysis and draft ordinance amendments.

ATTACHMENT(S): 1. April 3, 2014, memorandum from Councilmembers Hotchkiss and Rowse
2. Santa Barbara Municipal Code excerpts

PREPARED BY: Ariel Pierre Calonne, City Attorney
SUBMITTED BY: Ariel Pierre Calonne, City Attorney
APPROVED BY: City Administrator's Office



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE REPORT

ATTACHMENT 8

AGENDA DATE: October 21, 2014

TO: Ordinance Committee

FROM: Ariel Pierre Calonne, City Attorney

SUBJECT: Follow Up On Sidewalk Behavior And Panhandling Ordinances

RECOMMENDATION:

That the Ordinance Committee:

- A. Review draft ordinance amendments to the State Street Sitting and Lying Down Ordinance and the Abusive Panhandling Ordinance and forward recommendations to City Council; and
- B. Review proposed ordinances to prohibit public urination and defecation and to authorize the Library Director to promulgate facility specific regulations and forward recommendations to City Council.

DISCUSSION:

Background

On April 22, 2014, the City Council voted unanimously (6-0, Francisco absent) to refer to the Ordinance Committee several issues raised in a memorandum from Councilmembers Hotchkiss and Rowse. The memorandum raised the possibility of taking the following specific actions:

- Expanding the 7:00 a.m. to 9:00 p.m. hours of the current Sit/Lie prohibition;
- Adding a prohibition on sitting, standing or lying down upon any planting, railing or statue placed or installed on a public sidewalk;
- Expanding the "active" panhandling prohibition near ATM's from 25 feet to 80 feet, subject to constitutional analysis by the City Attorney;
- Expanding the "active" panhandling prohibition to other areas where there are captive audiences, such as buses and other public transportation vehicles; and
- Prohibiting urinating or defecating in public.

The Council memorandum also suggested directing the City Attorney to undertake research and report back to the Ordinance Committee on the legal feasibility of adding to the municipal code the following considerations:

- A prohibition on groups of people congregating in a manner that blocks the free movement of pedestrian traffic on our downtown sidewalks;
- A prohibition on the use of public benches and street furniture for the storage, sale or display of merchandise or personal items; and
- A prohibition on active panhandling within a prescribed distance of a queue of persons waiting to gain admission to a place of business and outdoor dining areas.

Thereafter, the Ordinance Committee met on June 10, 2014, and considered the Council's direction. The Ordinance Committee requested this office to prepare certain code amendments for review, and to complete a mapping project which would identify whether the proposed regulations would leave open sufficient public areas to pass constitutional muster, i.e., ample alternative channels of communication must be left open for panhandling and solicitation in general.

The Proposed Code Amendments

The Ordinance Committee requested further review of six municipal code amendments to address new and ongoing nuisance behaviors:

- A prohibition against urinating or defecating in public (Exhibit 1 attached);
- A prohibition on using public street furniture for the display of goods for sale or donation (Exhibit 2 attached);
- Adding expanded safety zones around sensitive locations where captive audiences feel threatened by active panhandling. These areas include:
 - Within 25 feet of an outdoor dining area
 - Within 80 feet of ATMs
 - Within 25 feet of admission lines, such as movie queues
 - Within 25 feet of public benches or seating areas
 - On buses or other public transportation (Exhibit 3 attached);
- Extending the existing "sit/lie" prohibition on State Street from 7:00 a.m. to 2:00 a.m. of the following day, rather than 9:00 p.m. (Exhibit 4 attached);
- Revising the prohibition on pedestrians blocking sidewalks to include congregated groups of people (Exhibit 5 attached); and
- Delegating the Library Director the authority to promulgate regulations for the use of the libraries, including the Central Library and its outdoor plaza (Exhibit 5A attached).

Each of these proposed amendments has distinct legal issues that should be considered.

Legal Issues

Prohibition against Urinating or Defecating in Public

This proposed code amendment is a straightforward exercise of the City's police power to protect the public health, safety, and welfare. There are ample public toileting facilities in Santa Barbara.

Prohibition on Using Public Street Furniture for the Display of Wares for Sale or Donation

Restricting the sale of goods in public can have First Amendment implications when goods bearing expressive messages, such as printed T-shirts or literature, are being sold. In *One World One Family Now v. City and County of Honolulu* (9th Cir. 1996) 76 F.3d 1009, Honolulu was faced with objections from visitors and local residents, as well as merchants, who complained that street T-shirt sales on one of the busiest commercial streets in Waikiki created a sidewalk obstruction and visual eyesore, and competed unfairly with "brick and mortar" stores. The city began enforcing a local ordinance that banned the sale of all "goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services ... upon the public streets, alleys, sidewalks, malls, parks, beaches and other public places in Waikiki." (*Id.* at p.1011.) After being threatened with prosecution, the plaintiffs (who sold printed T-shirts with messages like "TAKE IT EASY MEDITATE HANG LOOSE HAWAII" and "WAIKIKI HAWAII HARINAM") sued under the federal civil rights law.

The Ninth Circuit Court of Appeals began its analysis by acknowledging that "when the sale of merchandise bearing political, religious, philosophical or ideological messages is 'inextricably intertwined' with other forms of protected expression (like distributing literature and proselytizing), the First Amendment applies." (*Id.* at p.1012.) The Court found that the T-shirts in question met that standard; thus the sales activities were entitled to First Amendment protection.

The Court went on to apply the familiar "time, place and manner" rules:

"We use the standard governing time, place and manner restrictions. Such restrictions are valid if they (1) are content-neutral; (2) are narrowly tailored to serve a significant governmental interest; and (3) leave open ample alternative channels of communication." (*Ibid.*)

As to content neutrality, the Court held that:

“A speech restriction is content-neutral if it is “justified without reference to the content of the regulated speech.” “A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” ***The test is whether the government has adopted the restriction “because of disagreement with the message it conveys.”*** (*Ibid*; citations omitted, emphasis added.)

The Ordinance Committee’s proposal to ban the sale of all goods from public street furniture does not reflect disagreement with any particular speech message because it is generally applicable to all goods.

The Court also recognized three significant governmental interests that the sales ban legitimately promoted, each of which applies to a tourism-focused city like Santa Barbara as well as it did to Honolulu’s Waikiki: “(1) ‘maintaining the aesthetic attractiveness of Waikiki,’ (2) ‘promoting public safety and the orderly movement of pedestrians,’ and (3) ‘protecting the local merchant economy.’” (*Ibid.*)

Finally, the Court concluded that:

“Honolulu’s peddling ordinance also leaves open ample alternative channels of communication. The ordinance forecloses one narrow form of expression—sidewalk sales of message-bearing merchandise—and leaves the plaintiffs free to disseminate and seek financial support for their views through “myriad and diverse” alternative channels, such as handing out literature, proselytizing or soliciting donations. In addition, plaintiffs’ volunteers may hand out free T-shirts to passers-by, or mingle with Waikiki’s tourist throngs wearing T-shirts (thereby acting as human billboards). Plaintiffs may also sell T-shirts through local retail outlets or by opening their own stores, so long as they comply with the regulations generally applicable to merchants.” (*Id.* at p.1014.)

Based upon the *One World One Family Now* case, we believe Santa Barbara may legitimately include public street furniture among the locations where street vending is prohibited.

Expanded Safety Zones around Sensitive Locations Where Captive Audiences Feel Threatened By Active Panhandling

On June 10, 2014, the Ordinance Committee expressed serious concerns about safety around ATMs, movie queues, public benches, and outdoor dining areas because these are locations where persons who are being solicited are confined to restricted areas as captive audiences. In those situations, the persons being solicited are most likely to experience a sense of powerlessness, and to be intimidated by an unwanted effort by a panhandler to solicit donations. The Committee requested further analysis of adding or expanding safety buffer zones (within which panhandling would be prohibited) around these sensitive locations.

There is little doubt that valid time, place and manner regulations may prohibit abusive panhandling altogether, while prohibiting and allowing active or passive panhandling in specified locations only. The question for the Ordinance Committee and Council is whether the areas where active and passive panhandling would be prohibited – the expansion of the 25-foot buffer around ATMs to 80 feet, and the addition of a 25-foot buffer around movie queues, public benches, and outdoor dining areas – would leave open ample alternative channels for communication. This analysis is fundamentally data-driven.

We have approached the issues empirically by mapping the downtown core business areas and the areas affected by the proposed expanded safety zones. Over the summer, the City's GIS staff mapped the locations of ATMs, movie queues, public benches, outdoor dining areas and paseos on the State Street and Milpas Street corridors as they are currently regulated by the City. These facilities and locations were chosen because the Ordinance Committee identified them as locations where an additional safety buffer might be needed to address the recent increase in problematic panhandling. An overview map of State Street is attached as Exhibit "6" and more detailed maps of each block of State Street (400 to 1200) are provided as Exhibits "7" through "15."

The maps show that the proposed safety buffers have the effect of prohibiting panhandling in many areas of State Street. The Ordinance Committee should carefully consider these maps and determine whether ample alternative areas are provided for protected speech activities including panhandling.

Extending the Existing "Sit/Lie" Prohibition on State Street from 7:00 A.M. to 2:00 A.M. of the Following Day, Rather than 9:00 P.M.

The major legal issues presented are whether extending the hours of the existing sit/lie prohibition from 9:00 p.m. to 2:00 a.m. on State Street implicates either First Amendment or Eighth Amendment (cruel and unusual punishment) concerns.

The First Amendment concerns are familiar, and for the purposes of this analysis we assume without conceding that expressive conduct may be implicated by the act of sitting or lying down upon a sidewalk. Using the time, place and manner regulatory test, the proposed extension to 2:00 a.m. is clearly content-neutral. The significant governmental interests include the need for free pedestrian passage on crowded State Street, in this case focusing upon the late evening hour when the vibrant State Street nightlife scene causes conflict between revelers walking or milling about and those who might seek to sit or lie down upon the sidewalks. Because the regulations cover only the busiest portion of the busiest street in Santa Barbara, we believe ample alternative locations are available to sit or lie down on the public sidewalk. (See *Roulette v. City of Seattle* (9th Cir. 1996) 97 F.3d 300.)

The Eighth Amendment cruel and unusual punishment concerns are less familiar, and arise out of the potential disparate impact sit/lie regulations may have upon the homeless population. These concerns were noted in a now-vacated Ninth Circuit case called *Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118 (the opinion was withdrawn after the City settled the lawsuit). In *Jones*, homeless individuals brought a federal civil rights action seeking limited injunctive relief against enforcement of a Los Angeles ordinance that criminalized sitting, lying, or sleeping on public streets and sidewalks **at all times and in all places** within City. The plaintiffs argued, successfully, that the ordinance constituted cruel and unusual punishment because penalized homeless persons were on the streets due to the lack of available shelter space – effectively criminalizing their status as homeless rather than any distinct criminal conduct.

The Court began its analysis by declaring Los Angeles' ordinance "one of the most restrictive municipal laws regulating public spaces in the United States," noting that unlike Santa Barbara's ordinance, the L.A. regulation applied citywide and at all hours of the day or night. The Court went on to explain that:

"The City could not expressly criminalize the status of homelessness by making it a crime to be homeless without violating the Eighth Amendment, **nor can it criminalize acts that are an integral aspect of that status**. Because there is substantial and undisputed evidence that the number of homeless persons in Los Angeles far exceeds the number of available shelter beds at all times, including on the nights of their arrest or citation, Los Angeles has encroached upon Appellants' Eighth Amendment protections by criminalizing the unavoidable act of sitting, lying, or sleeping at night while being involuntarily homeless. A closer analysis of *Robinson* and *Powell* instructs that **the involuntariness of the act or condition the City criminalizes is the critical factor** delineating a constitutionally cognizable status, and incidental conduct which is integral to and an unavoidable result of that

status, from acts or conditions that can be criminalized consistent with the Eighth Amendment.” (*Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118, 1132 *vacated*, (9th Cir. 2007) 505 F.3d 1006; emphasis added.)

Importantly, the Court concluded by stating that:

“By our decision, we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets of Los Angeles at any time and at any place within the City. All we hold is that, so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds, ***the City may not enforce section 41.18(d) at all times and places throughout the City*** against homeless individuals for involuntarily sitting, lying, and sleeping in public.” (*Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118, 1138 *vacated*, (9th Cir. 2007) 505 F.3d 1006; emphasis added.)

Jones is clearly distinguishable from Santa Barbara’s ordinance in that the City’s ordinance applies only to a limited portion of one street during limited hours. Nonetheless, if the Court is persuaded that Santa Barbara’s ordinance is aimed at homelessness, rather than late night street obstruction of State Street revelers and daytime obstruction of tourists and residents in the City’s core commercial area, the City may face a legal challenge under the theory that extending the sit/lie ban until 2:00 a.m. inappropriately burdens those who have nowhere else to sleep. It is important to note that *Jones* is not the law, but only a potential insight into the Ninth Circuit’s current thinking.

Revising the Prohibition on Pedestrians Blocking Sidewalks to Include Congregated Groups of People

Laws prohibiting congregations of people in public forums, such as sidewalks, squarely implicate First Amendment speech and assembly rights. The initial question presented is whether the City’s existing circa-1966 regulation meets current constitutional scrutiny.

Santa Barbara Municipal Code section 9.98.010 provides as follows:

9.98.010 Unlawful.

No person shall stand or sit in or upon any street, sidewalk or crosswalk in the City in any manner so as to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians. (Ord. 3162 §1, 1966.)

While simple enough on its face, this ordinance raises serious First Amendment considerations, particularly if it is revised to address congregations of people on sidewalks at any time or place, because it would then broadly prohibit even speech-related activities, such as peaceful protests or picketing, which might “annoy” pedestrians or “hinder” their free passage.

The United States Supreme Court has long held that:

“Access to the ‘streets, sidewalks, parks, and other similar public places . . . for the purpose of exercising (First Amendment rights) cannot constitutionally be denied broadly . . .’ Free expression ‘must not, in the guise of regulation, be abridged or denied.’” (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 117.)

On the other hand, focused restrictions on the time, place and manner of street (or sidewalk) protests can be upheld:

“The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. **Governmental authorities have the duty and responsibility to keep their streets open and available for movement.** A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations.” (*Cox v. State of La.* (1965) 379 U.S. 536, 554-55; emphasis added.)

Santa Barbara’s existing Chapter 9.98 may be too broad to meet constitutional requirements because, on its face, it would prohibit a large array of constitutionally protected speech activities, such as peaceful protest and picketing.

This conclusion raises the next question, namely, can SBMC Chapter 9.98 be amended to narrow its reach to fit within constitutional dimensions. We would advise amending the existing ordinance to read as follows:

9.98.010 Unlawful Street or Sidewalk Obstruction.

No person shall stand, or sit, or congregate in or upon any street, sidewalk or crosswalk in the City ~~in any manner so as~~ with the intent to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians, or to block the entrance to a building, and refuse to disperse after having been ordered to do so by the police when the police reasonably believe an immediate threat to public safety is present.

~~9.98.020 Parade Viewing Excepted.~~

~~This chapter shall not apply to persons engaged in viewing a parade duly and regularly permitted by the City.~~

The proposed amendment adds an intent requirement and a requirement that the police order dispersal only in those situations where the sidewalk or street obstruction threatens public safety. This will allow the police to stop violent protests, which are not protected by the First Amendment, while still avoiding interference with constitutionally-protected speech activities on the streets and sidewalks. We also advise repealing SBMC section 9.98.020, which creates an exemption for persons viewing a parade. This exemption is unnecessary given the proposed public safety limitation on the ordinance, and may appear to be a difficult-to-defend content-based restriction.

With these amendments, we believe Chapter 9.98 may minimize First Amendment concerns while providing a useful tool to deal with persons who intentionally obstruct the sidewalks or streets, and who refuse to disperse when ordered to do so by the police in order to mitigate immediate threats to public safety.

Delegating the Library Director the Authority to Promulgate Regulations for the Use of the Libraries, Including the Central Library and its Outdoor Plaza

The City Council has the police power to regulate the use of public facilities including the libraries. This power may be delegated to the Library Director. The proposed ordinance (Exhibit 5A) grants the Library Director the authority to promulgate criminally enforceable regulations that would govern behavior at the City's library facilities.

CONCLUSION

We believe the accompanying ordinance revisions are responsive to the Ordinance Committee's requests. In closing, it is important to remember that the Council may generally enact reasonable time, place and manner restrictions upon constitutionally protected speech, provided that the regulations are content-

neutral, narrowly drawn, necessary to further a significant government interest, and allow for ample alternative channels for communication.

Content neutrality is critical:

“The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” (*Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).)

And, there must be “no evidence that the city adopted the ordinance because of a disagreement with the message” (*Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1044 (9th Cir. 2002).)

- ATTACHMENT(S):**
1. Prohibition on Urinating or Defecating in Public
 2. Prohibition on Use of Street Furniture For Display Of Goods For Sale Or Donation
 3. Expanded Active Panhandling Safety Zones
 4. Extended Sit/Lie Prohibition
 5. Sidewalk Obstruction Due To Congregated Groups Of People
 6. State Street 400-1200 Blocks
 7. State Street 400 Block
 8. State Street 500 Block
 9. State Street 600 Block
 10. State Street 700 Block
 11. State Street 800 Block
 12. State Street 900 Block
 13. State Street 1000 Block
 14. State Street 1100 Block
 15. State Street 1200 Block

PREPARED BY: Ariel Pierre Calonne, City Attorney

SUBMITTED BY: Ariel Pierre Calonne, City Attorney

APPROVED BY: City Administrator's Office

EXHIBIT 1 PROHIBITION ON URINATING OR DEFECATING IN PUBLIC

Chapter 9.07 Urinating or Defecating in Public.

Section 9.07.010 Urinating or Defecating in Public Prohibited.

No person shall defecate or urinate in public or upon any street, sidewalk, or other public place.

EXHIBIT 2 PROHIBITION ON USE OF STREET FURNITURE FOR DISPLAY
OF GOODS FOR SALE OR DONATION

UNCODIFIED FINDINGS:

The City Council finds that these regulations are necessary to maintain the aesthetic attractiveness of Santa Barbara which depends heavily on its tourism-based economy for its financial vitality. These regulations are also necessary in order to promote public safety and the orderly movement of pedestrians, particularly in the crowded downtown core, where on-street or on-sidewalk vending will present a substantial obstruction to pedestrian and vehicular traffic. Finally, these regulations are essential to protect the local merchant economy which would be undersold and threatened economically by competition from street vendors who do not pay rent or other overhead expenses.

9.48.010 Commercial Use of City Streets.

A. GENERALLY. It shall be unlawful for any person, whether acting as principal, agent, clerk, employee, or otherwise, to use any public street, public parking lot, public street furniture, or public sidewalk in the City for the purpose of selling, vending, offering for donations, offering for sale or soliciting or receiving orders for the sale of any goods, wares or merchandise.

B. SALE OF NEWSPAPERS. Notwithstanding subsection A hereof, nothing herein shall prohibit any person from selling or offering for sale newspapers, magazines and periodicals upon any of the public sidewalks of the City in the present customary and usual manner of selling and offering for sale of newspapers, magazines, and periodicals in the City.

EXHIBIT 2 PROHIBITION ON USE OF STREET FURNITURE FOR DISPLAY OF GOODS FOR SALE OR DONATION

C. EXEMPTION FOR SIDEWALK SALES, FARMERS' MARKETS, AND SIDEWALK CAFE TABLES. Notwithstanding subsection A hereof, an individual or an organization may, upon the issuance of a permit by the Director of Public Works in accordance with the requirements of this Chapter and the administrative regulations adopted pursuant hereto, use a public street or sidewalk in the City for the following limited purposes:

1. Sidewalk Sales. A retail business licensed to do business at a location within the City may conduct a sale of merchandise on a City sidewalk under the following conditions:
 - a. the sale occurs only on a public sidewalk immediately adjacent to the retail business; and
 - b. the retail business does not conduct such sidewalk sales for more than a total of ten (10) days for each calendar year provided, however, that those businesses within a two (2) block radius of a construction project which impacts pedestrian or vehicular access to the City block within which the business is located for a period exceeding fourteen (14) consecutive days may be allowed up to twenty (20) days for sidewalk sales during the year in which the construction project is undertaken.

2. Farmers' Markets. An individual or an organization may use a public street or City parking lot for the purpose of conducting a Certified Farmers' Market [as defined and provided for in Title 3, Chapter 3 of the California Code of Regulations] under the following conditions:

EXHIBIT 2 PROHIBITION ON USE OF STREET FURNITURE FOR DISPLAY OF GOODS FOR SALE OR DONATION

EXHIBIT 2 PROHIBITION ON USE OF STREET FURNITURE FOR DISPLAY OF GOODS FOR SALE OR DONATION

- a. the merchandise offered for sale at the Farmers'

Market is allowed to be sold at a Certified Farmers' Market; and

- b. the use of the street or public parking lot is authorized by and pursuant to a written license agreement between the City and the Market sponsor, which license agreement limits the Market to a specified day or days of the week and to certain limited hours; and,

- c. the vendors of merchandise at the Farmers' Market are authorized to conduct such sales by the organization sponsoring the Market and entering into the license agreement with the City.

3. Limited Nonprofit Sidewalk Sales. In connection and concurrent with a Parade or Event (as permitted and defined in Municipal Code Section 9.12.020), which Parade or Event is sponsored by a nonprofit entity (as evidenced by tax-exempt status under state and federal tax laws), a public sidewalk may be used for the limited merchandising of items or services under the following conditions:

- a. the sidewalk sales may occur for a period not to exceed five (5) days in any calendar year, and the sales must be concurrent with the associated Parade or Event; and,

- b. the location of any booth or table used by a sidewalk vendor under this subsection shall be at a specific location approved in advance by the City; and,

EXHIBIT 2 PROHIBITION ON USE OF STREET FURNITURE FOR DISPLAY OF GOODS FOR SALE OR DONATION

EXHIBIT 2 PROHIBITION ON USE OF STREET FURNITURE FOR DISPLAY OF GOODS FOR SALE OR DONATION

c. the net proceeds received by the nonprofit corporation from such sales are to be devoted exclusively for the benefit of the sponsoring nonprofit organization(s); and,

d. the persons conducting such sales are authorized in writing to do so by the nonprofit organization sponsoring the event; and,

e. for the purposes of this subsection, the word “concurrent” shall be defined as occurring within the same calendar week (Sunday through Saturday).

4. Sidewalk Sales in Connection with a Reserved Park Event.

A public street or sidewalk immediately adjacent to a City park facility may be used for the limited merchandising of items under the following conditions:

a. the person or organization sponsoring the merchandising is a nonprofit entity, and it has reserved the adjacent park facility for an event pursuant to the requirements of Santa Barbara Municipal Code Chapter 15.05 and 15.16; and, event; and

b. the sales occur only during the time the park is being used for the reserved event; and,

c. the persons conducting such sales are authorized in writing to do so by the nonprofit sponsoring the event and;

d. the net proceeds received by the nonprofit corporation from such sales are to be devoted exclusively for the benefit of the sponsoring nonprofit organization.

EXHIBIT 2 PROHIBITION ON USE OF STREET FURNITURE FOR DISPLAY OF GOODS FOR SALE OR DONATION

EXHIBIT 2 PROHIBITION ON USE OF STREET FURNITURE FOR DISPLAY
OF GOODS FOR SALE OR DONATION

5. Sidewalk Cafe Tables Under Chapter 9.95. for the placement of sidewalk cafe tables in accordance with Santa Barbara Municipal Code Chapter 9.95.

D. SIDEWALK MERCHANDISING REGULATIONS AND PERMITS.

The City Administrator, acting by and through the Director of Public Works, is hereby directed to prepare an appropriate administrative process (along with related administrative regulations) for the City's acceptance, review, and processing of applications for the issuance of sidewalk merchandising permits, as such permits are allowed by and consistent with the requirements of this Section.

EXHIBIT 3 EXPANDED ACTIVE PANHANDLING SAFETY ZONES

9.50.010 Purpose.

In order to protect and promote the rights of the general public to be free from inappropriate conduct and from the ~~potential~~ intimidating physical confrontations sometimes associated with panhandling, the City Council finds that there is a need to adopt a City ordinance which imposes reasonable and specific time, place, and manner limitations on those forms of inappropriate and unlawful conduct which may be associated with ~~aggressive~~ abusive and active panhandling. At the same time, the Council seeks to properly and duly recognize, as well as ~~fully~~ protect to the ~~full~~ fullest extent possible, the First Amendment free speech rights of all concerned.

The Council ~~also~~ finds that balancing the need for public safety with the need to ~~duly~~ protect constitutional rights is especially critical in certain popular retail and visitor-serving areas of the City, ~~such as~~ Specifically, Cabrillo Boulevard, lower Milpas Street, and certain blocks of State Street (those within the City Central Business District) ~~since these areas~~ are popular public gathering spaces and are often crowded with members of the public and visitors to the Santa Barbara area, ~~and since~~ Moreover, these areas provide only limited public amenities, such as public seating and outdoor dining areas, and members of the public should be free to use those areas without fear of coercive panhandling with its attendant risk of fraud, intimidation and violence. The Council further finds that, because these areas of Santa Barbara often have thousands of visitors each day and because there is limited public seating and gathering areas available within these blocks of these streets, it is necessary and appropriate to provide

EXHIBIT 3 EXPANDED ACTIVE PANHANDLING SAFETY ZONES

panhandling regulations which prevent some persons from monopolizing the use of a public bench or a public seating area, as well as nearby sidewalk areas, for active panhandling. There is therefore a necessity for the City Council to adopt City-regulations which provide for the shared and reasonable use of these public facilities by all members of the public, especially the elderly and persons with special access needs.

The City Council further finds that panhandling near automated bank teller machines is particularly problematic because persons who use such machines may have large quantities of cash in their possession and generally feel vulnerable to attack or intimidation. Likewise, active panhandling on busses and other forms of public transportation threatens the person being solicited because they are in a confined space with no means of leaving the area in order to avoid being panhandled.

Finally, ~~the~~ The City Council believes-finds that these City-panhandling regulations will not prevent those persons who wish to properly-solicit alms or charitable donations from appropriately using public benches and public seating facilities within these areas of the City for temporary respite purposes, nor will these panhandling regulations impact the content of any protected forms of expressive statements made by a panhandler or otherwise improperly restrict anyone's First Amendment rights.

The City Council also finds that these panhandling regulations have been demonstrated, by careful mapping of the regulated areas which has been considered by Council, to leave open ample alternative locations within the City

EXHIBIT 3 EXPANDED ACTIVE PANHANDLING SAFETY ZONES

for active and passive panhandling. Active panhandling on or near public benches and seating areas is prohibited only in the most crowded and intensely used areas of the City's commercial districts, and even with those areas many areas are open for active and passive panhandling.

9.50.030 Abusive Panhandling Prohibited; Specific Locations Where Active Panhandling is Restricted.

A. Abusive Panhandling Prohibited. Abusive Panhandling is unlawful and prohibited entirely within the city of Santa Barbara.

B. Active Panhandling Restricted. Active Panhandling is prohibited when the person being panhandled is in any of the following locations:

1. Waiting at a bus stop;
2. In a vehicle on a public street or alleyway;
3. In a City parking lot or parking structure without regard to whether the person is in a vehicle or not;
4. Within twenty-five feet of an outdoor dining area of a restaurant or other dining establishment serving food for immediate consumption;
5. Within ~~twenty-five~~ eighty feet of an automated bank teller machine;
- or
6. Within twenty-five feet of ~~In~~ a queue of persons waiting to gain admission to a place of business or to a vehicle, or waiting to purchase an item or admission ticket; or
7. On buses or other public transportation vehicles.

EXHIBIT 3 EXPANDED ACTIVE PANHANDLING SAFETY ZONES

9.50.040 Use of Public Benches and Facilities on Certain Streets for Active Panhandling.

Active Panhandling is prohibited while seated on or otherwise using a public bench or seating area (including any landscape planter or other public street furniture which can be sat upon), and within twenty-five feet of such benches and seating areas, within the following areas of the City:

1. State Street. On either side of State Street from the 400 block to the 1200 block; or
2. Milpas Street. Either side of Milpas Street from the 00 block South to the 200 block North; or
3. Cabrillo Boulevard. Cabrillo Boulevard between Castillo Street and Milpas Street.

EXHIBIT 4 EXTENDED SIT/LIE PROHIBITION

9.97.010 Sitting or Lying on Public Sidewalks in Certain Downtown Areas of State Street.

A. Prohibition. No person shall sit or lie down upon a public sidewalk or public paseo, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk or public paseo, during the hours between 7:00 a.m. and 9:00 ~~p.m.~~ 2:00 a.m. of the following day along the first thirteen (13) blocks of State Street from Cabrillo Boulevard to and including the 1300 block of State Street.

For the purposes of this subsection (A), the terms "public sidewalk or public paseo" shall also include those public pedestrian sidewalks or public paseos which serve as access to and from State Street and the City parking facilities adjacent to State Street within the designated blocks, which shall also specifically include the area known as "Storke Placita," as well as the railings, statues, sculptures, or planter areas within the designated blocks.

B. Exceptions. The prohibitions of Subsection A shall not apply to any person or persons:

1. who is sitting or lying down on a public sidewalk due to a medical emergency;
2. who, as the result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk;
3. who is operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to a street use permit issued pursuant to Chapter 9.95 of this Title or who is participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted

EXHIBIT 4 EXTENDED SIT/LIE PROHIBITION

on public sidewalk pursuant to a street use or other applicable parade permit issued by the City in accordance with this Code.

Nothing in any of these exceptions shall be construed to permit any conduct which is otherwise prohibited by this Code.

C. Scope. Nothing herein shall be deemed to apply the requirements of subsection (A) to the following:

1. a person who is sitting on a chair, ~~wall~~, or bench located on the public sidewalk which is supplied by a public agency or by the abutting private property owner for such purposes or;

2. a person who is sitting on a public sidewalk within a bus stop zone while waiting for public transportation.

D. Prior Warning. No person shall be prosecuted for a violation of this Chapter unless the person engages in conduct prohibited by this Chapter after having been notified by a law enforcement officer that the conduct violates this Chapter.

EXHIBIT 5 SIDEWALK OBSTRUCTION DUE TO CONGREGATED GROUPS
OF PEOPLE

9.98.010 Unlawful Street or Sidewalk Obstruction.

No person shall stand, or sit, or congregate in or upon any street, sidewalk or crosswalk in the City ~~in any manner so as~~ with the intent to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians, or to block the entrance to a building, and refuse to disperse after having been ordered to do so by the police when the police reasonably believe an immediate threat to public safety is present.

~~9.98.020 Parade Viewing Excepted.~~

~~This chapter shall not apply to persons engaged in viewing a parade duly and regularly permitted by the City.~~

EXHIBIT 5A LIBRARY REGULATIONS

2.28.030 Duties of Director.

The Library Director shall be responsible for the supervision and control of all personnel, materials, and equipment assigned to the Department and for the performance of the functions of the Department, subject to the supervision of the City Administrator. The Library Director shall have the authority to promulgate and post facility specific regulations. No person shall violate any such regulations. Any person found to be in violation of a facility specific regulation promulgated by the Library Director shall be subject to removal from the facility upon request of the Library Director or his or her designee. Such request, when made to law enforcement after refusal to comply, shall be a basis for forcible removal, citation or arrest.



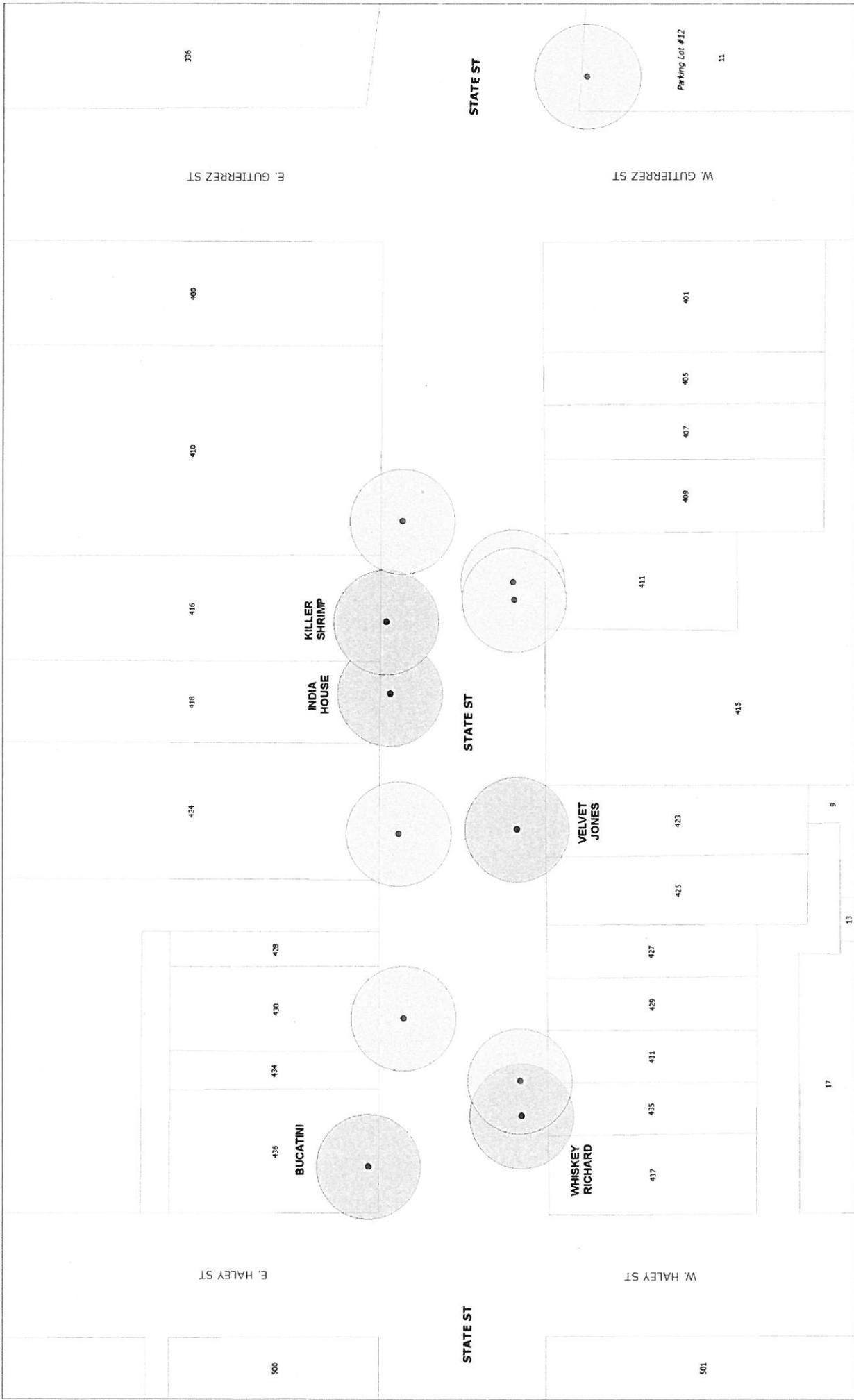
- Legend**
- Parcel Number
 - Boundary
 - Parking Lot #12
 - 25ft buffer
 - 25ft buffer
 - 25ft buffer

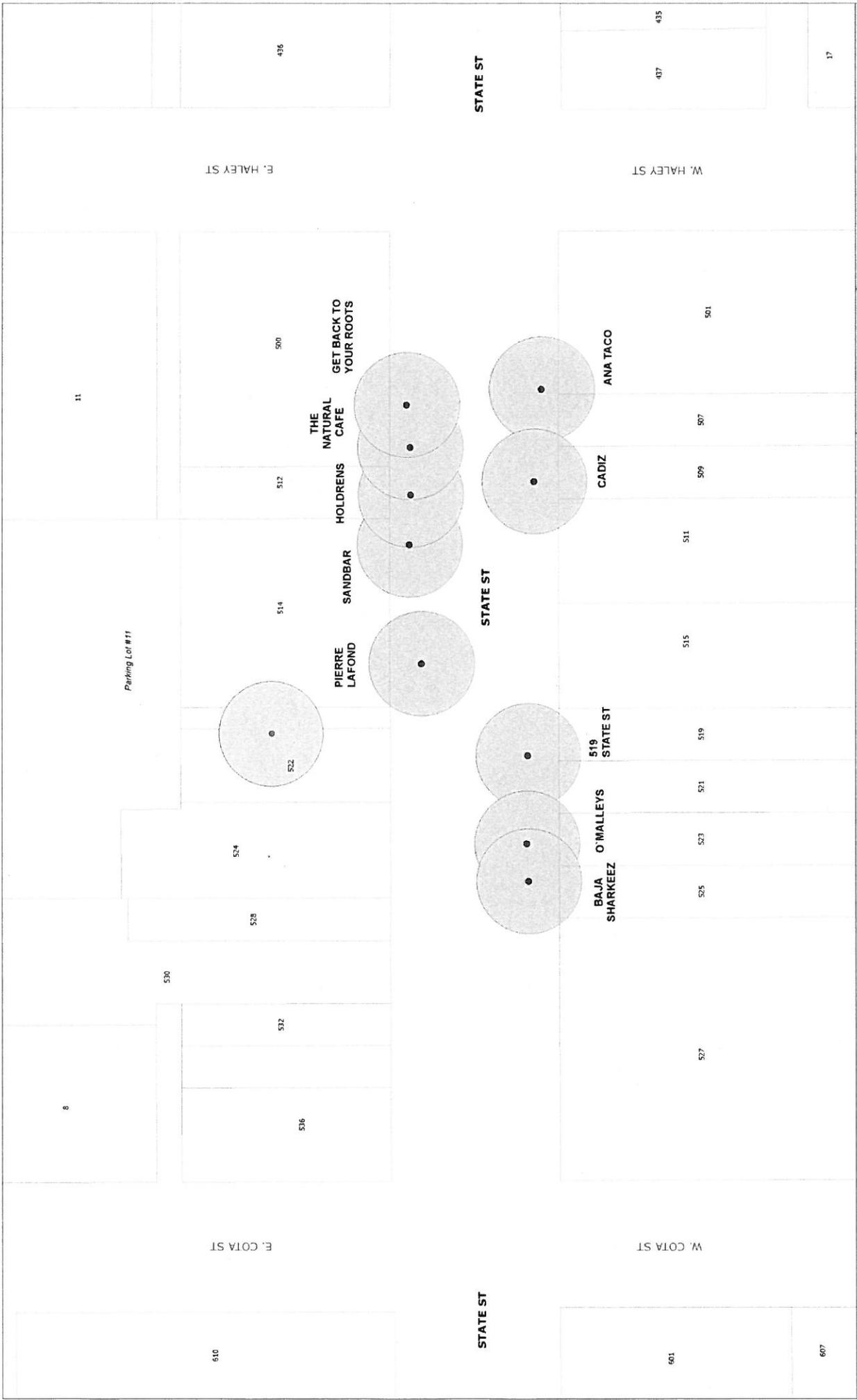
STATE STREET: 400 BLOCK

September 16, 2014

EXHIBIT 7

Map prepared by the City of St. Louis, Missouri, for the purpose of providing information to the public. The City of St. Louis, Missouri, is not responsible for any errors or omissions on this map. The City of St. Louis, Missouri, is not responsible for any damages or losses resulting from the use of this map.





- Legend**
- Requirements
 - Parking Lot Access
 - 2nd floor
 - 3rd floor

STATE STREET: 500 BLOCK

September 18, 2014

EXHIBIT 8





- Legend**
- Buildings
 - 200 Builer
 - 250 Builer
 - 250 Builer

STATE STREET: 700 BLOCK

September 17, 2014

EXHIBIT 10



PLANNING DEPARTMENT
 300 CALIFORNIA STREET, SUITE 100
 SAN FRANCISCO, CA 94102
 TEL: 415.376.3300
 WWW.SANFRANCISCO.CA.GOV



Legend

- ATM Location
- Business
- Starbucks
- Bank of America

STATE STREET: 800 BLOCK

EXHIBIT 11

THIS MAP IS A REPRESENTATION OF THE INFORMATION PROVIDED TO THE CITY OF SEASIDE AND IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION. THE CITY OF SEASIDE IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE CITY OF SEASIDE IS NOT PROVIDING ANY PROFESSIONAL SERVICES. THE CITY OF SEASIDE IS NOT PROVIDING ANY FINANCIAL ADVICE. THE CITY OF SEASIDE IS NOT PROVIDING ANY LEGAL ADVICE. THE CITY OF SEASIDE IS NOT PROVIDING ANY MEDICAL ADVICE. THE CITY OF SEASIDE IS NOT PROVIDING ANY OTHER ADVICE.





- Legend**
- ATM Location
 - Benches
 - Missing Tree/Sign
 - Parking Lot Access
 - Plantings

STATE STREET: 900 BLOCK

EXHIBIT 12



September 11, 2014



- Legend**
- Buildings
 - Restaurants
 - 200' Buffer
 - 200' Buffer

STATE STREET: 1100 BLOCK

EXHIBIT 14



September 18, 2014



Legend

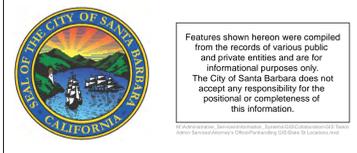
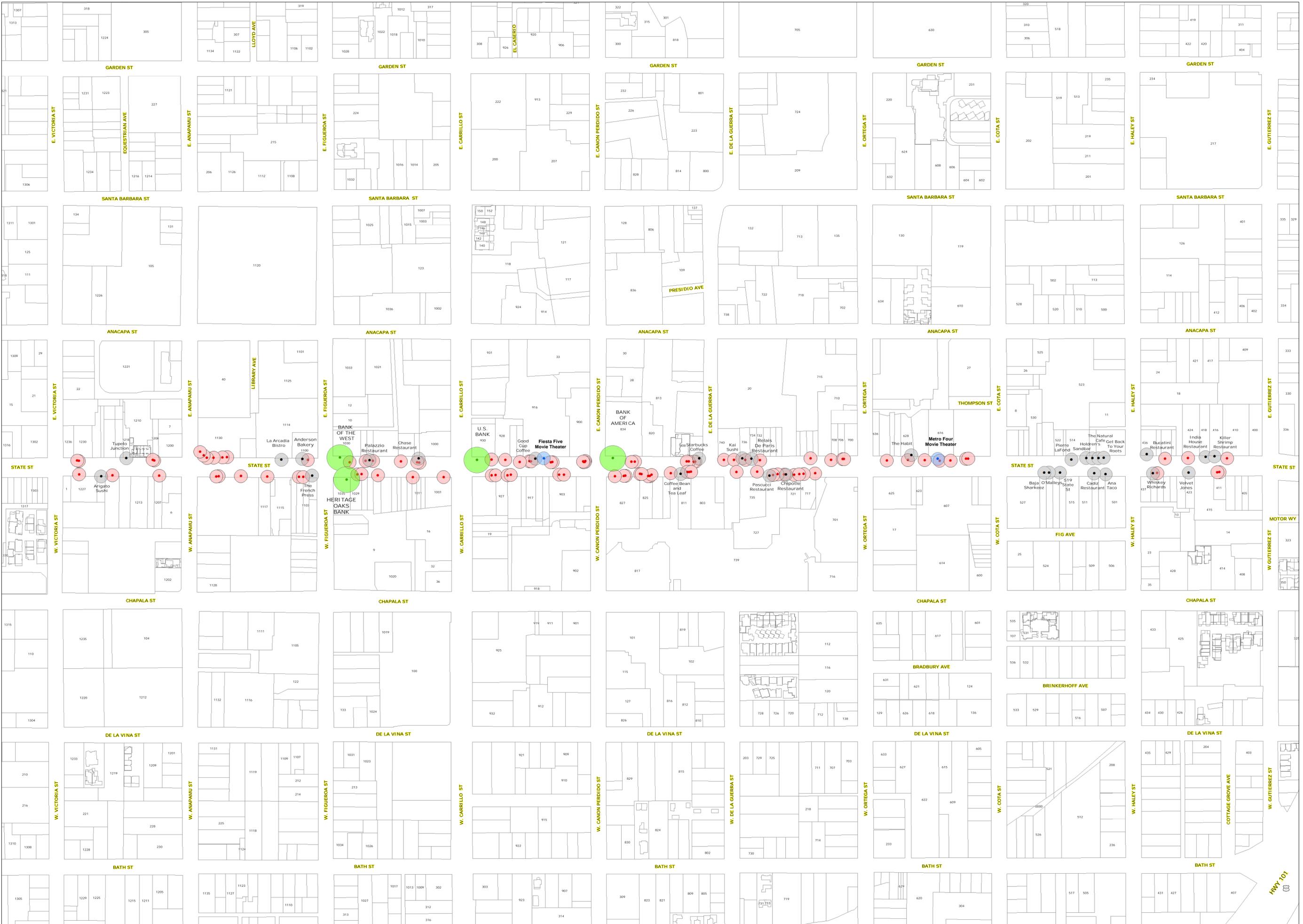
- Building
- Restaurant
- 2nd floor
- 3rd floor

EXHIBIT 15 STATE STREET: 1200 BLOCK

September 10, 2018



Map prepared by the City of Seattle
 Planning Department
 3200 4th Avenue, Suite 200
 Seattle, WA 98108
 Phone: 206.435.3000
 Fax: 206.435.3001
 Email: planning@seattle.gov



ATTACHMENT 9

Features shown hereon were compiled from the records of various public and private entities and are for informational purposes only. The City of Santa Barbara does not accept any responsibility for the positional or completeness of this information.

State St Locations

March 10, 2015

Legend

- Movie Theater
- ATM Locations
- Restaurants
- Benches
- 25ft Buffer - Movie Theaters
- 50ft buffer - ATM
- 25ft buffer - Restaurants
- 25ft buffer - Benches



HWY 101

E. HALEY ST

E. GUTIERREZ ST

W. HALEY ST

W GUTIERREZ ST

MOTOR WY



State St Locations

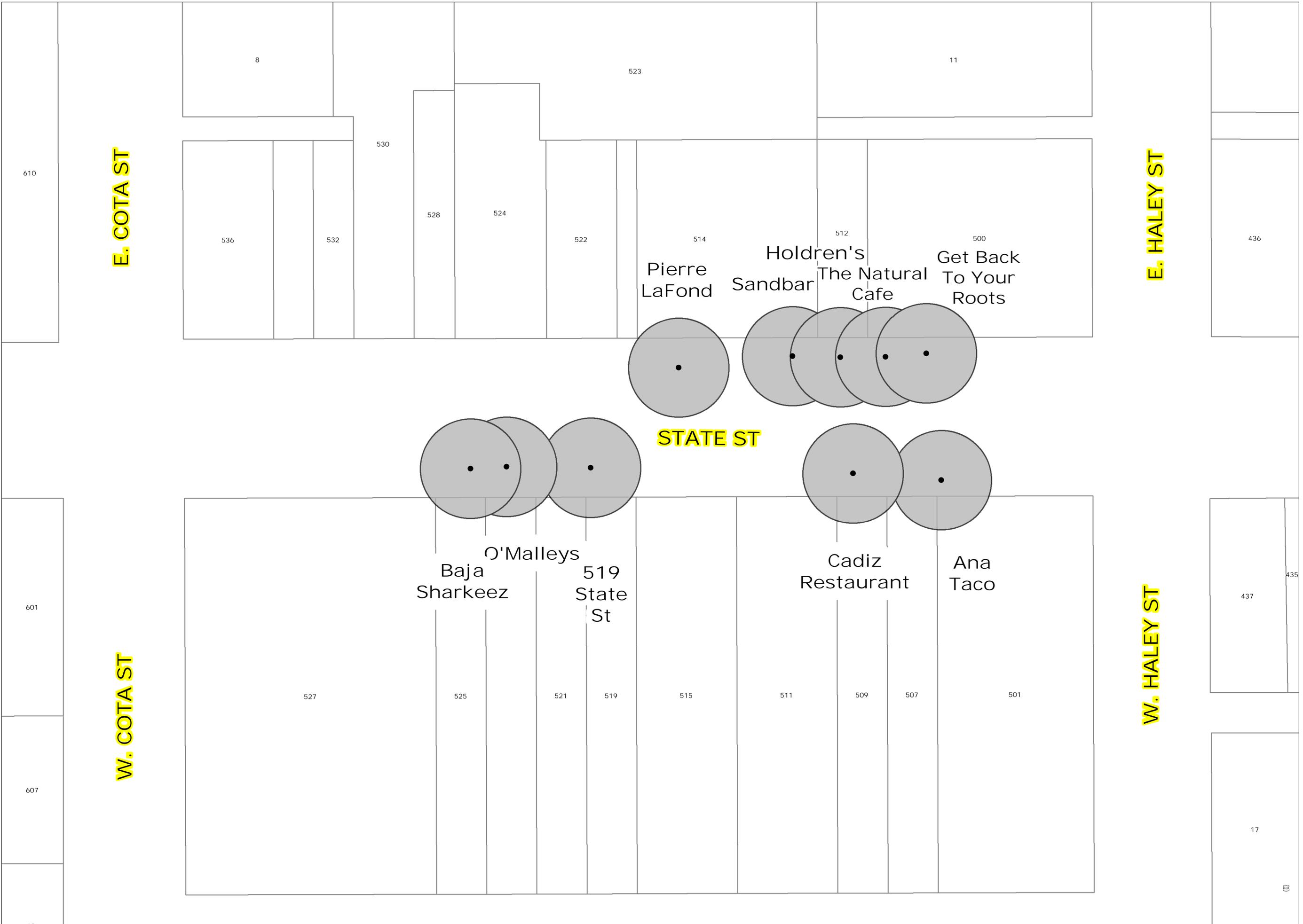
400 Block
March 10, 2015

Legend

- Restaurants
- Benches
- 25ft buffer - Restaurants
- 25ft buffer - Benches



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E. COTA ST

E. HALEY ST

W. COTA ST

W. HALEY ST

STATE ST

State St Locations
500 Block
 March 10, 2015

Legend

- Restaurants
- 25ft buffer - Restaurants



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15
700

E. ORTEGA ST

E. COTA ST

701

W. ORTEGA ST

W. COTA ST

The Habit

**Metro Four
Movie Theater**

STATE ST



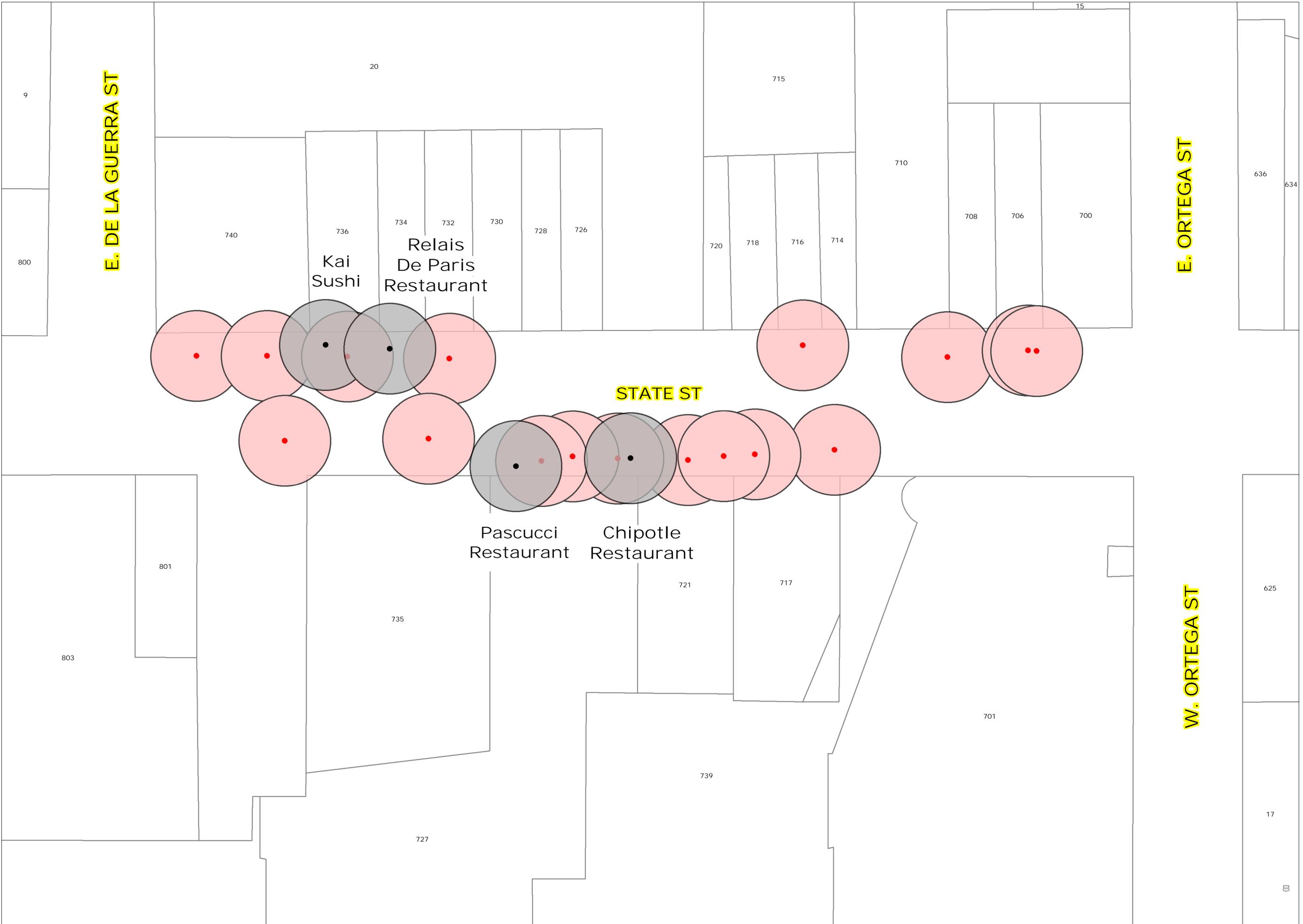
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State St Locations

600 Block
March 10, 2015

Legend	
● Benches	25ft buffer - Benches
● Restaurants	25ft buffer - Restaurants
● Movie Theater	25ft buffer - Movie Theater





E. DE LA GUERRA ST

E. ORTEGA ST

W. ORTEGA ST

STATE ST

Kai Sushi
Relais De Paris Restaurant

Pascucci Restaurant
Chipotle Restaurant

State St Locations
700 Block
March 10, 2015

- Legend**
- Restaurants
 - Benches
 - 25ft buffer - Restaurants
 - 25ft buffer - Benches



Features shown hereon were compiled from the records of various public and private entities and are for informational purposes only. The City of Santa Barbara does not accept any responsibility for the positional or completeness of this information.

E. CANON PERDIDO ST

E. DE LA GUERRA ST

W. CANON PERDIDO ST

STATE ST

BANK OF AMERICA

Starbucks Coffee

Coffee Bean and Tea Leaf



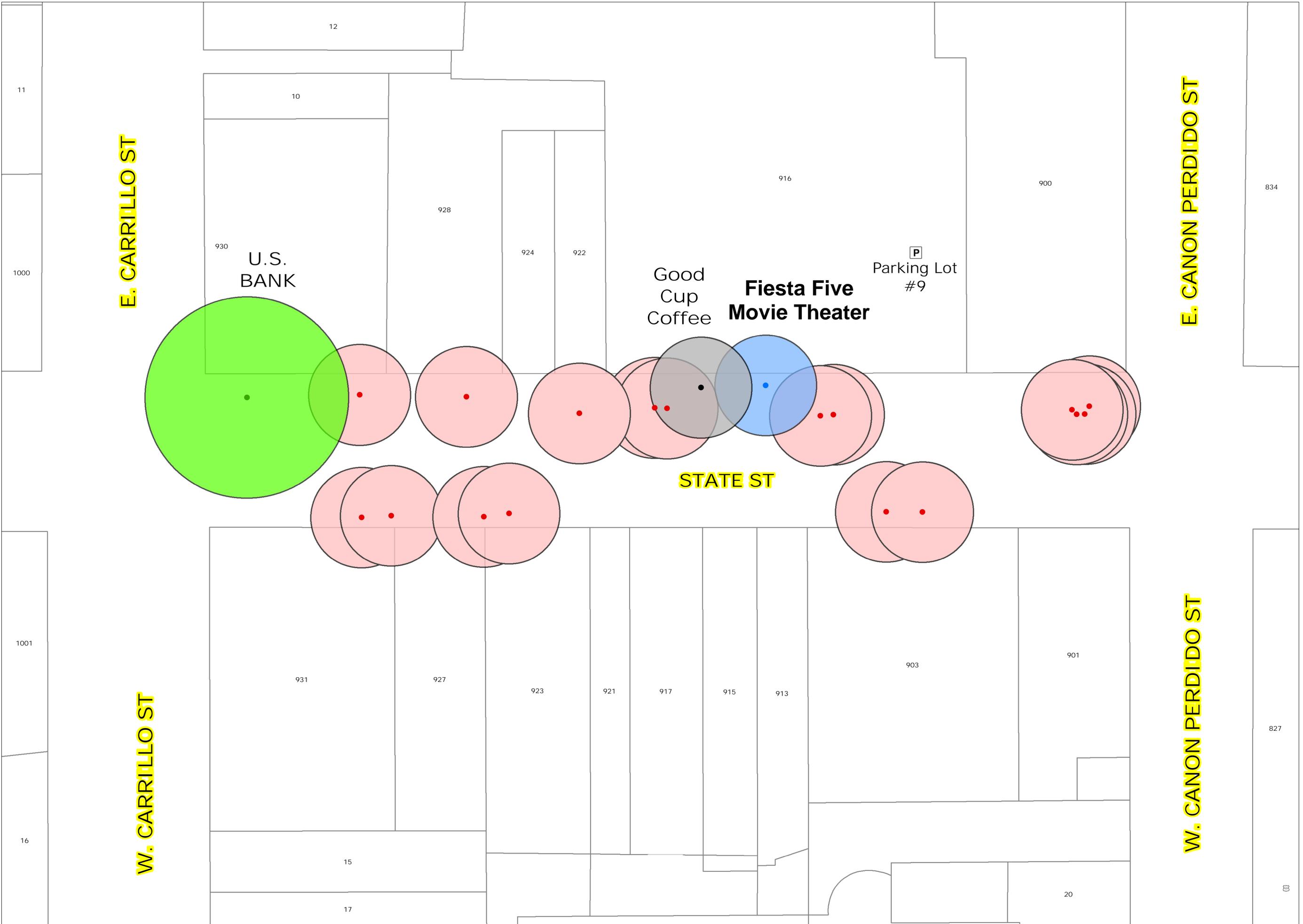
Features shown hereon were compiled from the records of various public and private entities and are for informational purposes only. The City of Santa Barbara does not accept any responsibility for the positional or completeness of this information.

State St Locations

800 Block
March 10, 2015

Legend	
● ATM's	50ft buffer - ATM's
● Benches	25ft buffer - Benches
● Restaurants	25ft buffer - Restaurants





Features shown hereon were compiled from the records of various public and private entities and are for informational purposes only. The City of Santa Barbara does not accept any responsibility for the positional or completeness of this information.

State St Locations

900 Block
March 10, 2015

Legend	
● Movie Theater	 25ft Buffer - Movie Theaters
● ATM Locations	 50ft buffer - ATM
● Restaurants	 25ft buffer - Restaurants
● Benches	 25ft buffer - Benches





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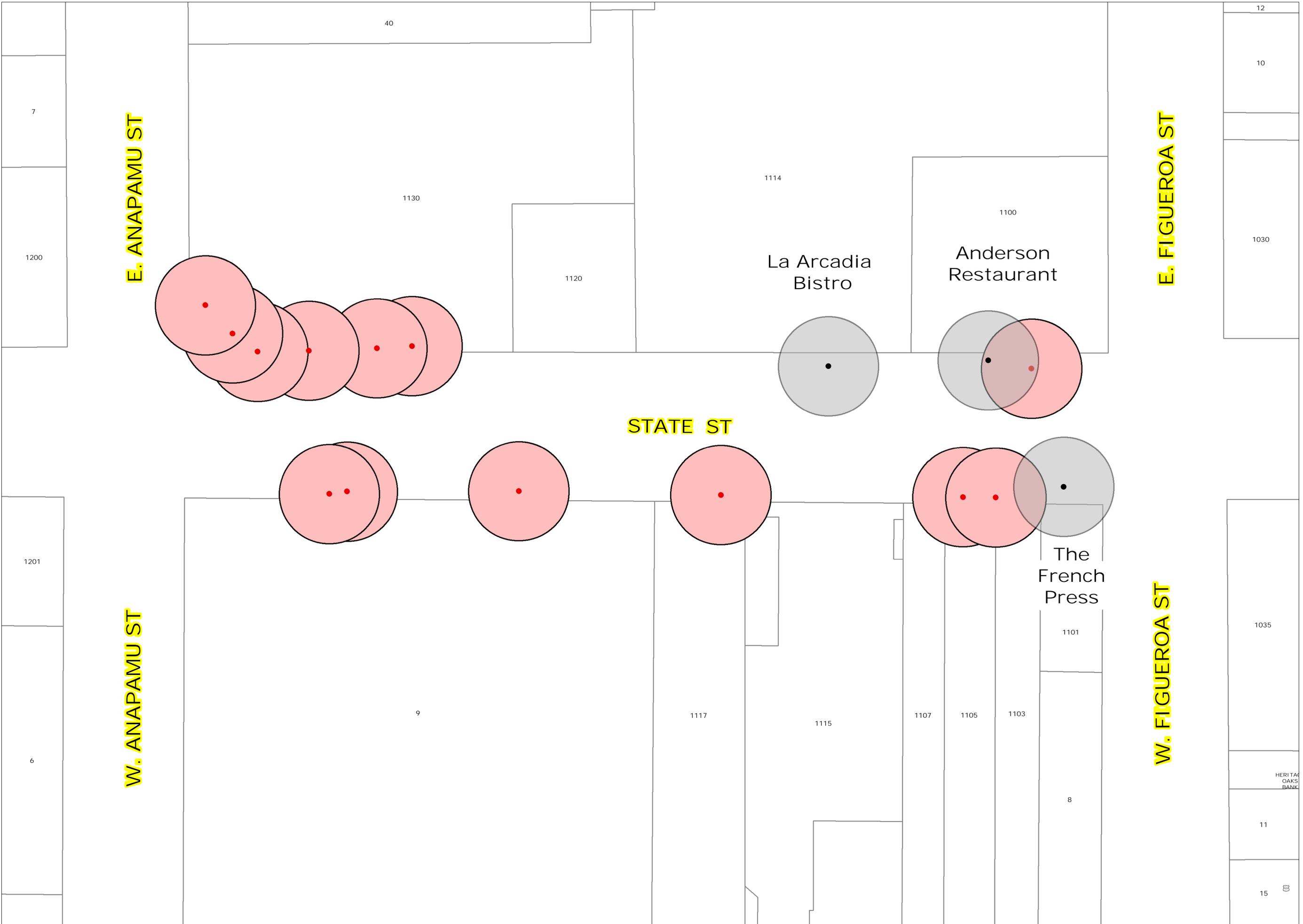
State St Locations

1000 Block
March 10, 2015

Legend

- ATM Locations
- Restaurants
- Benches
- 50ft buffer - ATM
- 25ft buffer - Restaurants
- 25ft buffer - Benches





E. ANAPAMU ST

W. ANAPAMU ST

E. FIGUEROA ST

W. FIGUEROA ST

STATE ST

La Arcadia
Bistro

Anderson
Restaurant

The
French
Press

State St Locations

1100 Block
March 10, 2015

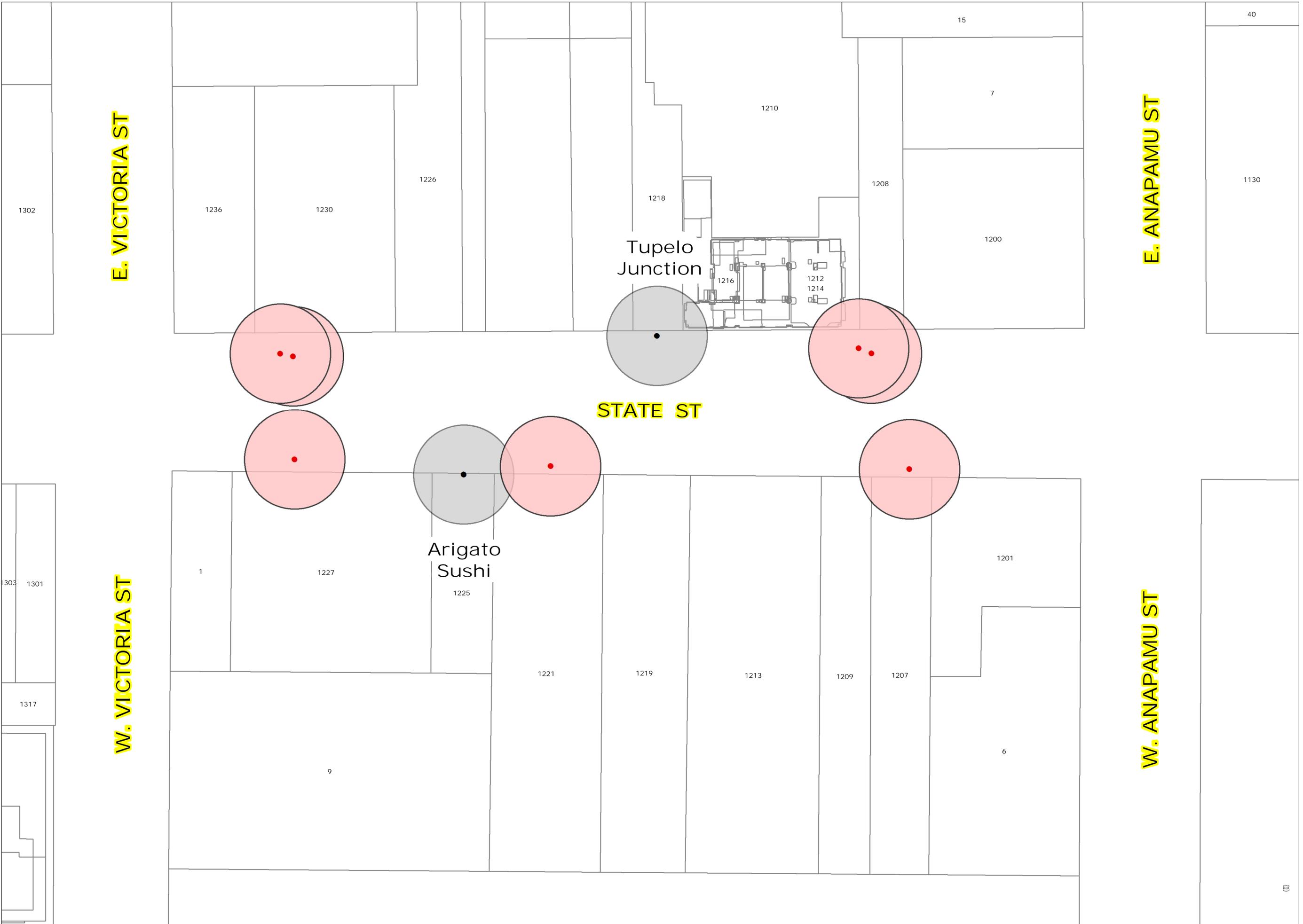
Legend

- Restaurants
- Benches
- 25ft buffer - Restaurants
- 25ft buffer - Benches



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HERITAGE
OAKS
BANK



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State St Locations

1200 Block
March 10, 2015

- Legend**
- Restaurants
 - Benches
 - 25ft buffer - Restaurants
 - 25ft buffer - Benches



Sidewalk Behavior and Panhandling Ordinances

City Council

April 14, 2015

Ariel Pierre Calonne
City Attorney
City of Santa Barbara



Ordinance Amendments -- 1

- Prohibition against urinating or defecating in public (Attachment 1)
- Prohibition on using public street furniture for the display of goods for sale or donation (Attachment 2)



Ordinance Amendments -- 2

- Adding expanded safety zones around sensitive locations where captive audiences feel threatened by active panhandling. These areas include:
 - Within 25 feet of an outdoor dining area
 - Within 50 feet of ATMs
 - Within 25 feet of admission lines, such as movie queues



Ordinance Amendments -- 3

- Within 25 feet of public benches or seating areas
- On buses or other public transportation (Attachment 3)
- Extending the existing “sit/lie” prohibition on State Street from 7:00 a.m. to 2:00 a.m. of the following day, rather than 9:00 p.m. (Attachment 4)



Ordinance Amendments -- 4

- Revising the prohibition on pedestrians blocking sidewalks to include congregated groups of people (Attachment 5)
- Delegating the Library Director the authority to promulgate regulations for the use of the libraries, including the Central Library and its outdoor plaza (Attachment 6)



Legal Framework – Time, Place and Manner Restrictions

- “We use the standard governing time, place and manner restrictions. Such restrictions are valid if they (1) are content-neutral; (2) are narrowly tailored to serve a significant governmental interest; and (3) leave open ample alternative channels of communication.”



Legal Framework – TPM Plus

- TPM Test Applies to:
 - Restricting the Display of Goods for Sale or Donation
 - Expanded Safety Zones
 - Extended “Sit/Lie” Hours (if “Expressive”)
 - And note potential 8th Amendment Cruel and Unusual Punishment Concerns
- Special Sidewalk Group Assembly Rules



Prohibition on Urinating or Defecating in Public

Section 9.07.010 Urinating or Defecating in Public Prohibited.

No person shall defecate or urinate in public or upon any street, sidewalk, or other public place.

While this behavior may be prosecuted under state law as a nuisance, this form of action constitutes a misdemeanor that falls to the District Attorney's Office for prosecution.



Prohibition on Using Street Furniture for Display of Goods for Sale or Donation

9.48.010 Commercial Use of City Streets.

A. **GENERALLY.** It shall be unlawful for any person, whether acting as principal, agent, clerk, employee, or otherwise, to use any public street, public parking lot, public street furniture, or public sidewalk in the City for the purpose of selling, vending, offering for donations, offering for sale or soliciting or receiving orders for the sale of any goods, wares or merchandise.



Expanded Panhandling Safety Zones

-- 1

9.50.030 Abusive Panhandling Prohibited;
Specific Locations Where Active Panhandling is
Restricted.

A. Abusive Panhandling Prohibited.

Abusive Panhandling is unlawful and prohibited
anywhere within the city of Santa Barbara.

B. Active Panhandling Restricted.

Active Panhandling is prohibited when the
person being panhandled is in any of the
following locations:



Expanded Panhandling Safety Zones

-- 2

1. Waiting at a bus stop;
2. In a vehicle on a public street or alleyway;
3. In a City parking lot or parking structure without regard to whether the person is in a vehicle or not;
4. Within twenty-five feet of an outdoor dining area of a restaurant or other dining establishment serving food for immediate consumption;



Expanded Panhandling Safety Zones

-- 3

5. Within ~~twenty-five~~ fifty feet of an automated bank teller machine; ~~or~~

6. Within twenty-five feet of ~~In~~ a queue of persons waiting to gain admission to a place of business or to a vehicle, or waiting to purchase an item or admission ticket; or

7. On buses or other public transportation vehicles.



Extended Sit/Lie Hours and Locations -- 1

A. Prohibition. No person shall sit or lie down upon a public sidewalk or public paseo, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk or public paseo, during the hours between 7:00 a.m. and ~~9:00 p.m.~~ 2:00 a.m. of the following day along the first thirteen (13) blocks of State Street from Cabrillo Boulevard to and including the 1300 block of State Street.



Extended Sit/Lie Hours and Locations -- 2

For the purposes of this subsection (A), the terms "public sidewalk or public paseo" shall also include those public pedestrian sidewalks or public paseos which serve as access to and from State Street and the City parking facilities adjacent to State Street within the designated blocks, which shall also specifically include the area known as "Storke Placita," - as well as the railings, statues, sculptures, or planter areas within the designated blocks.



Sidewalk Group Assembly Ordinance

9.98.010 Unlawful Street or Sidewalk Obstruction.

No person shall stand, or sit, or congregate in or upon any street, sidewalk or crosswalk in the City ~~in any manner so as~~ with the intent to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians, or to block the entrance to a building, and refuse to disperse after having been ordered to do so by the police when the police reasonably believe an immediate threat to public safety is present.



Library Director Regulatory Authority

2.28.030 Duties of Director.

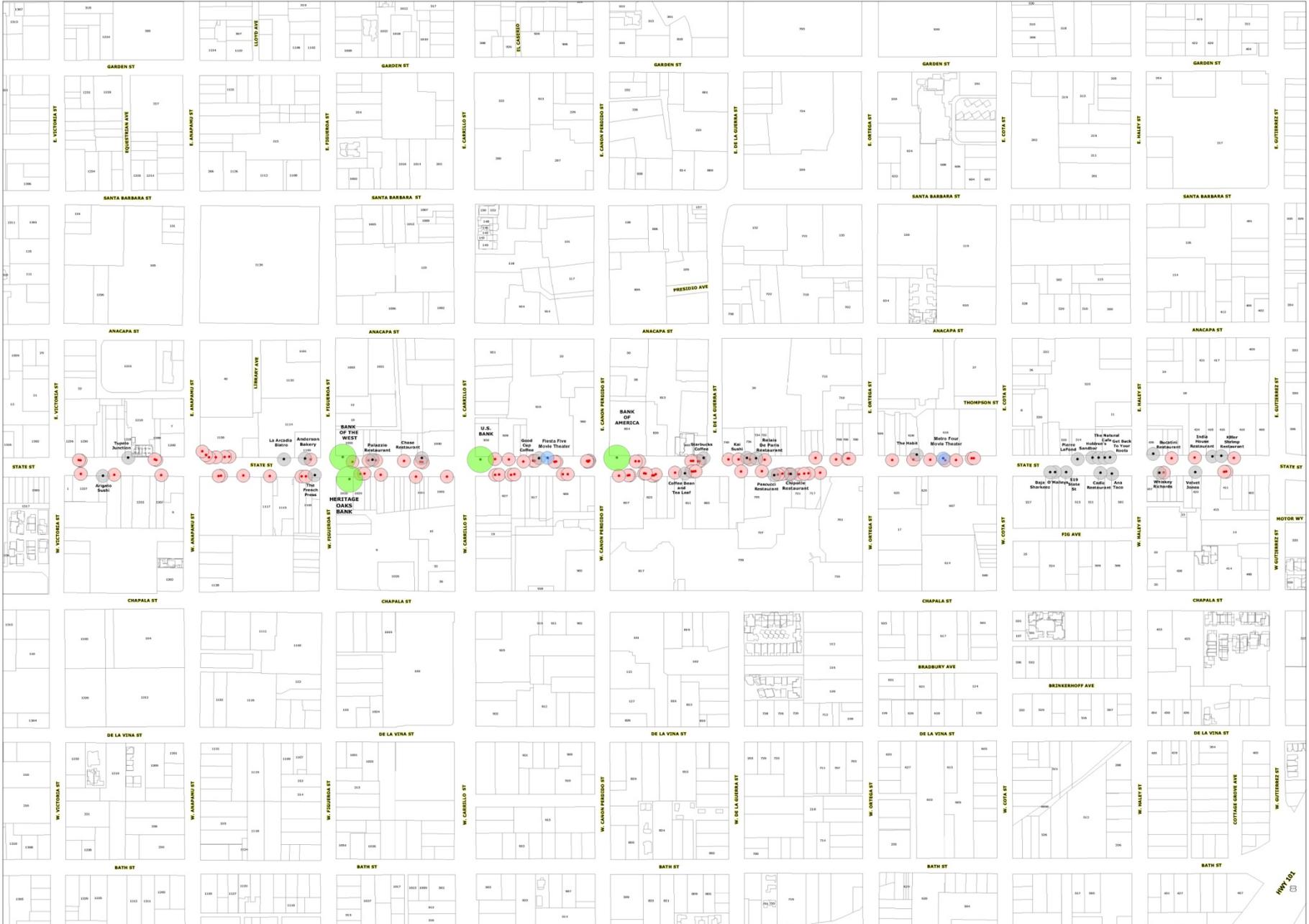
..... The Library Director shall have the authority to promulgate and post facility specific regulations. No person shall violate any such regulations. Any person found to be in violation of a facility specific regulation promulgated by the Library Director shall be subject to removal from the facility upon request of the Library Director or his or her designee. Such request, when made to law enforcement after refusal to comply, shall be a basis for forcible removal, citation or arrest.



Mapping Project

- Maps Address Availability of Alternative Locations for Panhandling
- GIS staff identified and mapped ATMs, public benches, theater queues, parking lot access ways (paseos for sit/lie), and outdoor restaurant dining areas





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State St Locations

March 10, 2015

- Legend**
- Movie Theater
 - ATM Locations
 - Restaurants
 - Benches
 - 25ft Buffer - Movie Theaters
 - 50ft buffer - ATM
 - 25ft buffer - Restaurants
 - 25ft buffer - Benches



HWY 101

E. HALEY ST

E. GUTIERREZ ST

W. HALEY ST

W GUTIERREZ ST

MOTOR WY



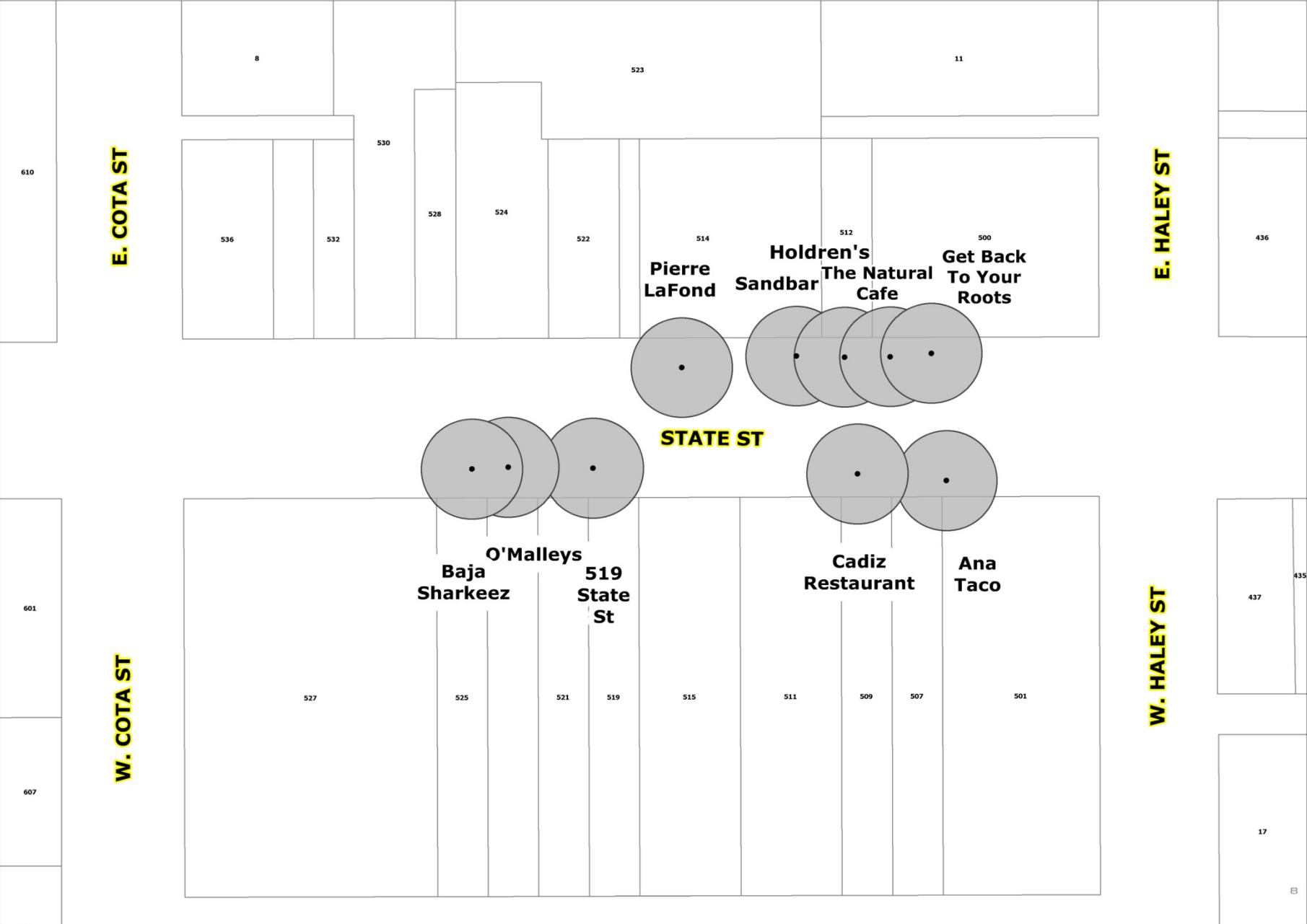
State St Locations

400 Block
March 10, 2015

- Legend**
- Restaurants
 - Benches
 - 25ft buffer - Restaurants
 - 25ft buffer - Benches



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State St Locations

500 Block
March 10, 2015

Legend

- Restaurants
- 25ft buffer - Restaurants





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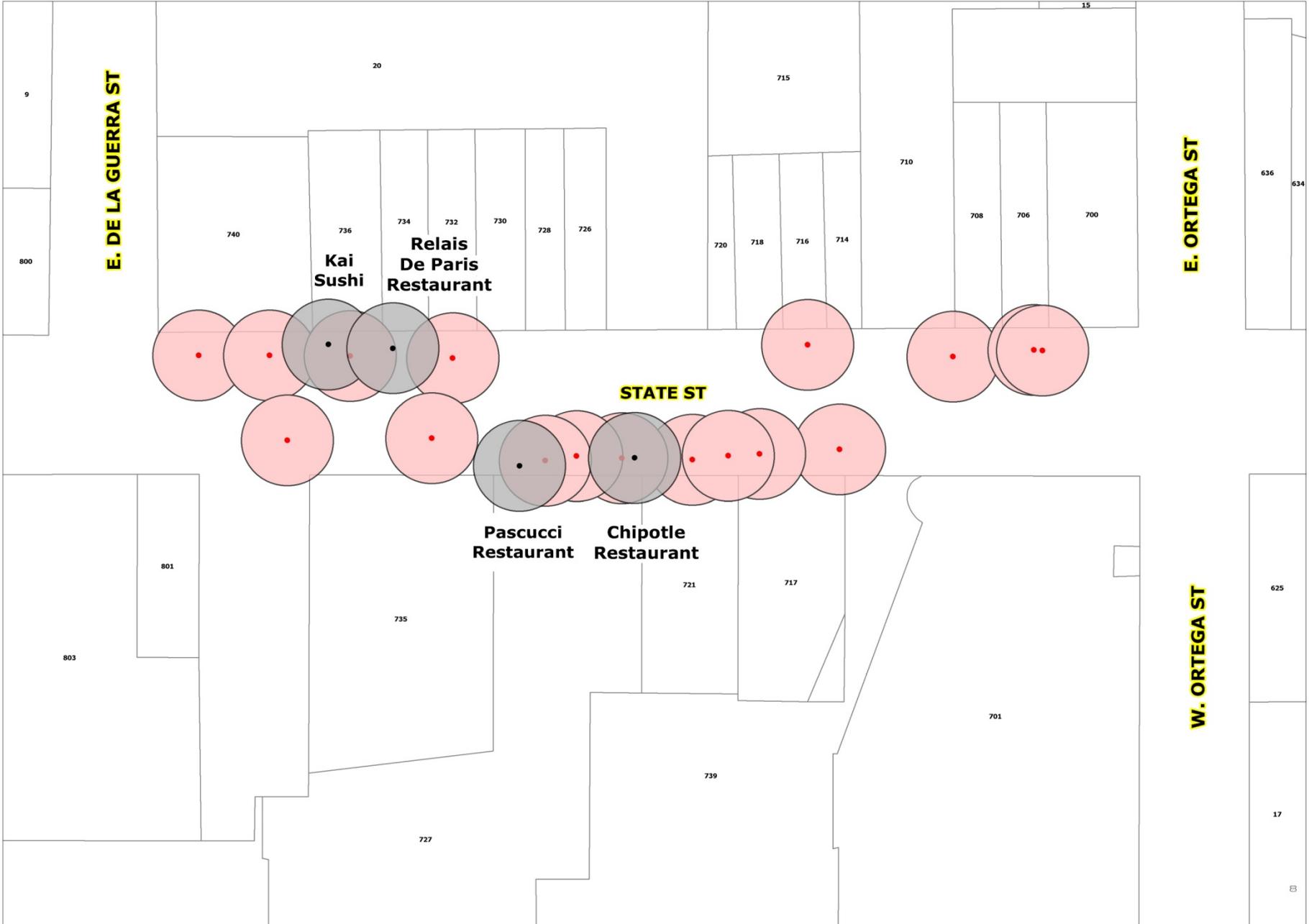
State St Locations

600 Block
March 10, 2015

Legend

- Benches
- Restaurants
- Movie Theater
- 25ft buffer - Benches
- 25ft buffer - Restaurants
- 25ft buffer - Movie Theater





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State St Locations

700 Block
March 10, 2015

Legend

- Restaurants
- Benches
- 25ft buffer - Restaurants
- 25ft buffer - Benches





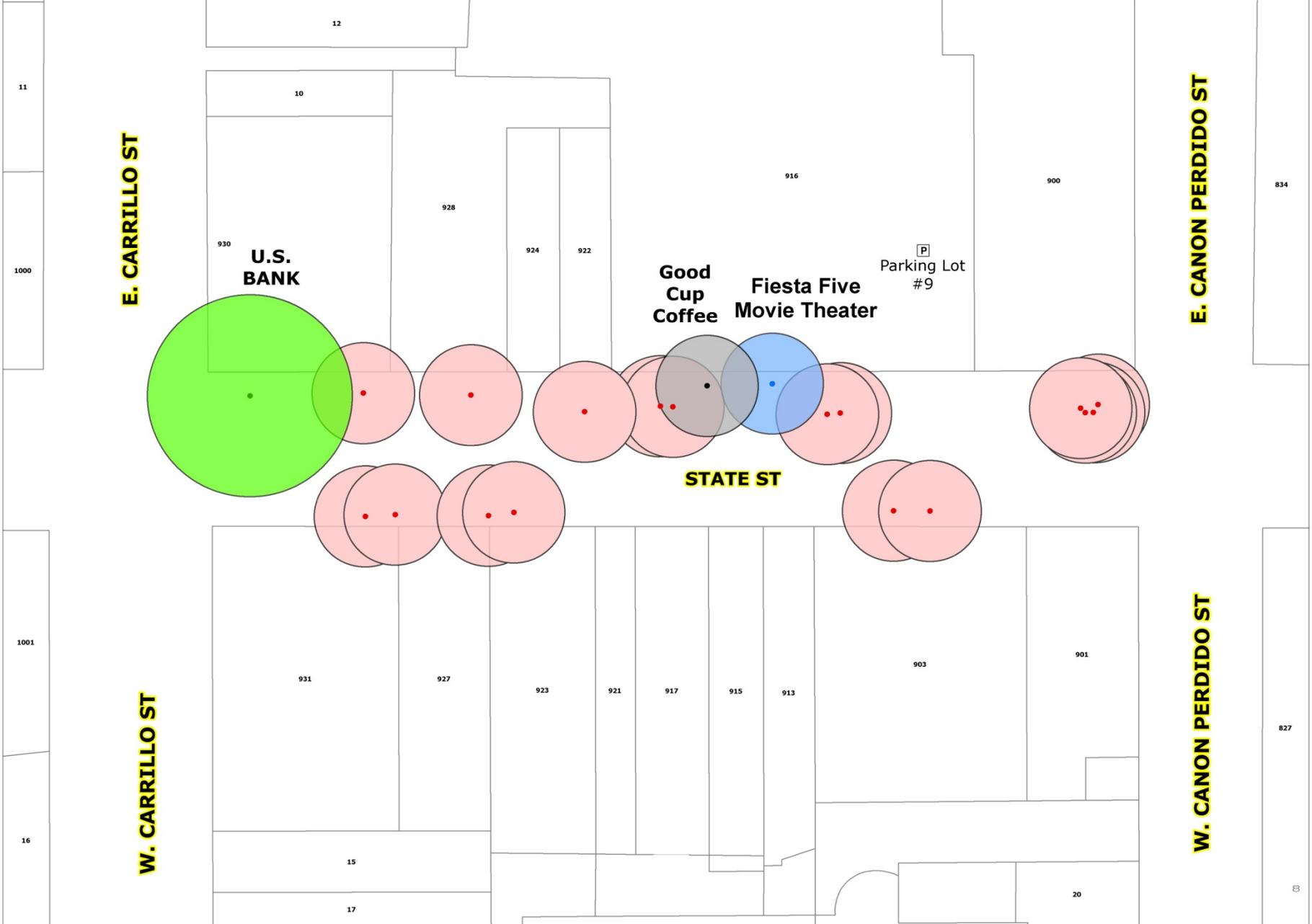
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State St Locations

800 Block
March 10, 2015

- Legend**
- ATM's
 - Benches
 - Restaurants
 - 50ft buffer - ATM's
 - 25ft buffer - Benches
 - 25ft buffer - Restaurants





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State St Locations

900 Block
March 10, 2015

Legend	
● Movie Theater	 25ft Buffer - Movie Theaters
● ATM Locations	 50ft buffer - ATM
● Restaurants	 25ft buffer - Restaurants
● Benches	 25ft buffer - Benches





State St Locations

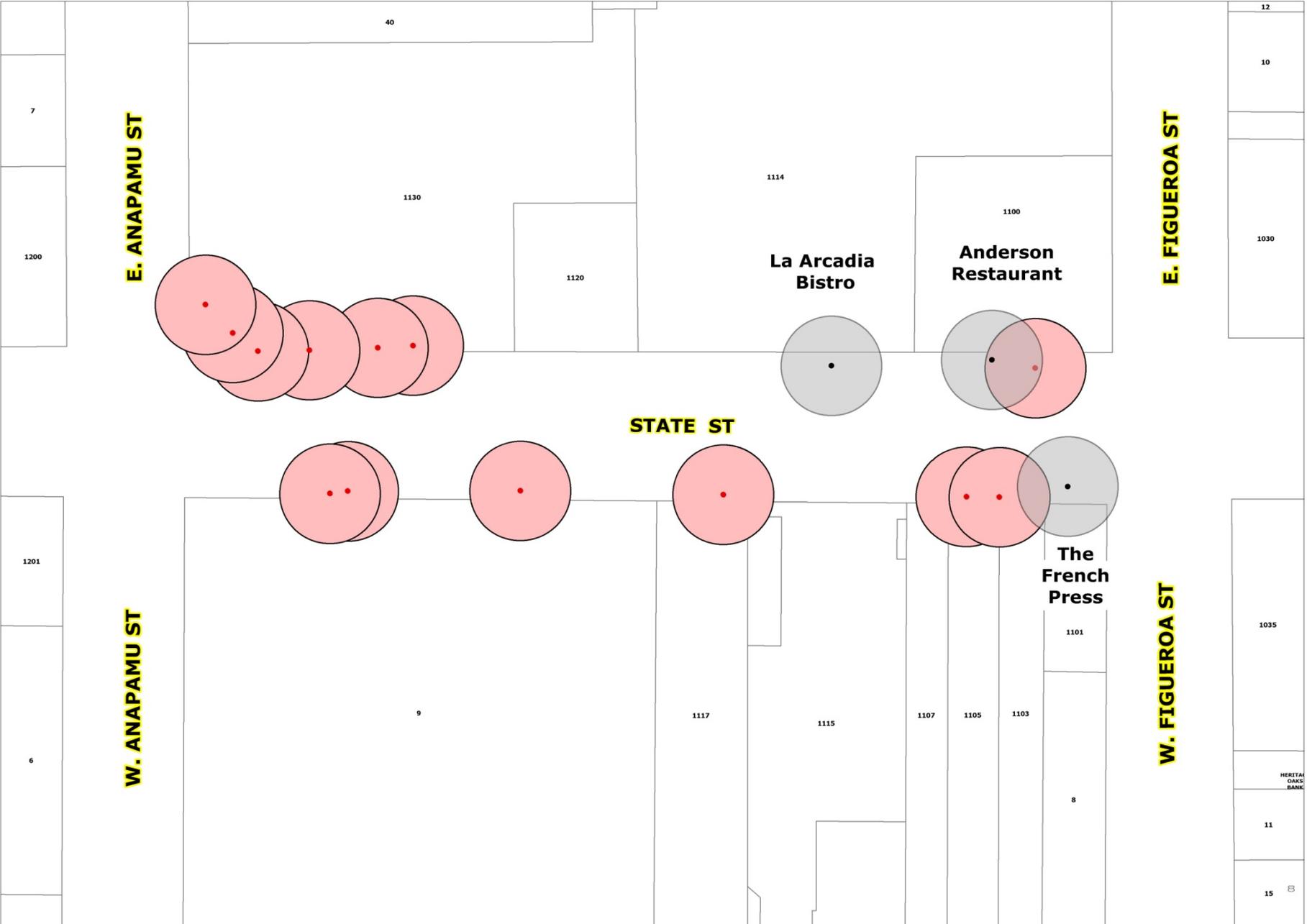
1000 Block

March 10, 2015

Legend

- ATM Locations
- Restaurants
- Benches
- 50ft buffer - ATM
- 25ft buffer - Restaurants
- 25ft buffer - Benches





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State St Locations

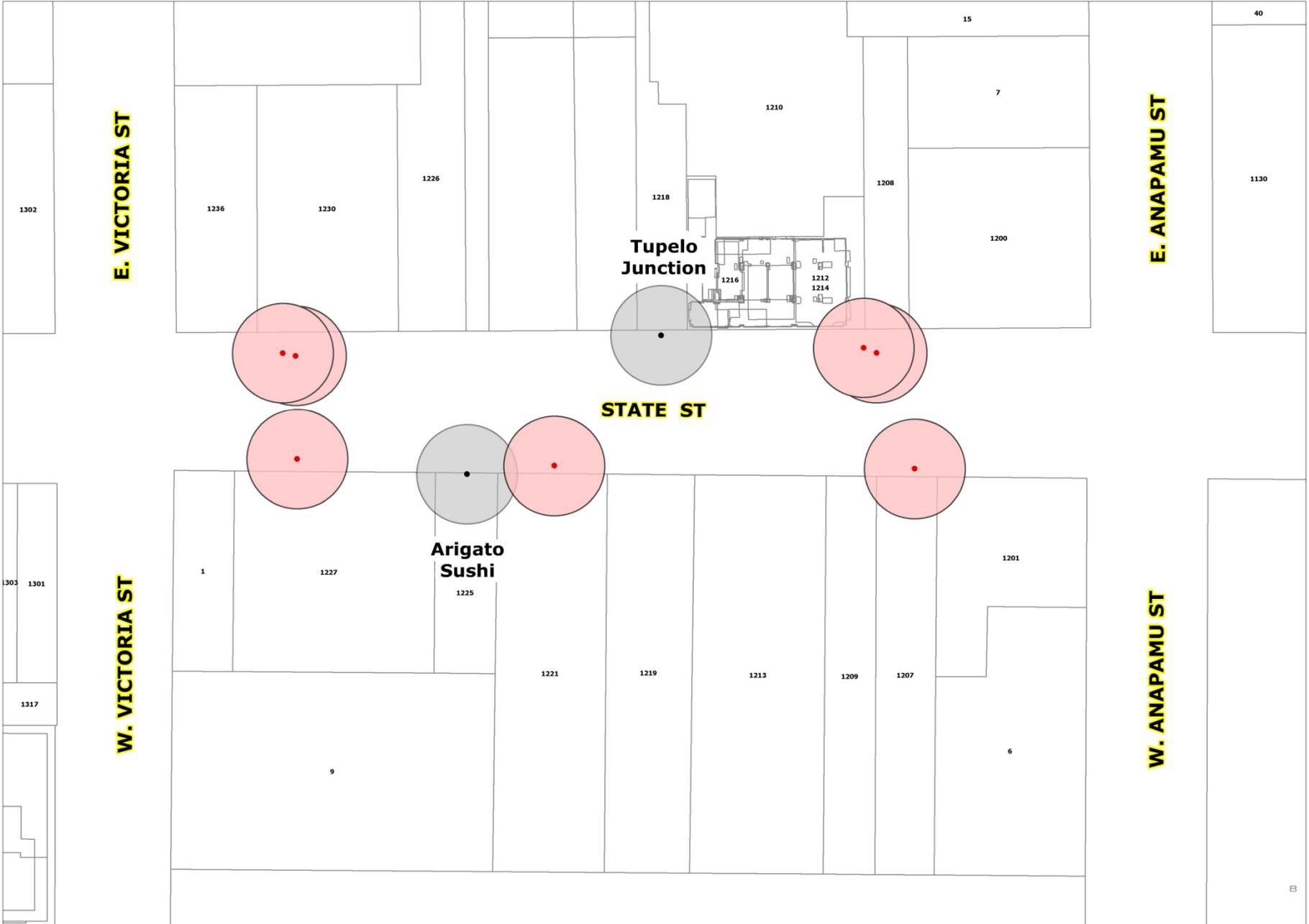
1100 Block
March 10, 2015

Legend

- Restaurants
- Benches
- 25ft buffer - Restaurants
- 25ft buffer - Benches



HERITAGE OAKS BANK



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State St Locations

1200 Block
March 10, 2015

- Legend**
- Restaurants
 - Benches
 - 25ft buffer - Restaurants
 - 25ft buffer - Benches

