

File No. 190869

Committee Item No. 7

Board Item No. 24

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date November 18, 2019

Board of Supervisors Meeting

Date 12/10/2019

Cmte Board

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Completed by: Victor Young Date Nov. 14, 2019

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[Administrative Code - Farmers' Markets and Flea Markets]

Ordinance amending the Administrative Code to affirm the County Agricultural Commissioner's authority under state law to certify and inspect farmers' markets and producers, and to enforce state law governing the direct marketing of agricultural products to consumers; replace the County Agricultural Commissioner with the Director of Property as the operator of City-operated farmers' markets and flea markets; eliminate the allocation of space at farmers' markets for the distribution of surplus commodities to needy persons; increase the permit fees for certified producers and other vendors; and increase the permit fees for farmers' market operators.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in *single-underline italics Times New Roman font*. Deletions to Codes are in *strikethrough italics Times New Roman font*. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in ~~strikethrough Arial font~~. Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Chapter 9A of the Administrative Code is hereby amended by deleting existing Sections 9A.1 through 9A.20, and adding new Sections 9A.1 through 9A.7, to read as follows:

~~SEC. 9A.1. ESTABLISHMENT AUTHORIZED; APPROVED SALES.~~

~~The Agricultural Commissioner is hereby authorized to establish, maintain and direct in the City and County one or more farmers' markets for the sale of food, agricultural and horticultural~~

1 *products, fresh and dried, and for the sale of fish by the growers, producers or fishers thereof in the*
2 *State.*

3 *(a) The sale of fish shall be limited to the sale of whole fish or fish filleted on the premises with*
4 *properly sanitized utensils. All fish shall be stored at a temperature of 45 Fahrenheit or lower. All fish*
5 *shall be sold from self-contained vehicles. There shall be proper waste disposal of any unsold fish and*
6 *all fish cuttings, trimmings, wrappings and containers.*

7
8 ***SEC. 9A.2. FINANCES FOR MAINTENANCE AND OPERATION.***

9 *Maintenance and operation of each market established under the provisions of this Chapter*
10 *shall be financed by fees charged to producers who utilize the facilities of the market and by such other*
11 *funds as may be appropriated therefor in accordance with the budgetary procedure of the Charter.*

12
13 ***SEC. 9A.3. LOCATION.***

14 *(a) A market established under the provisions of this chapter may be located at any suitable*
15 *site selected by the Agricultural Commissioner and owned or leased by the City and County.*

16 *(b) A market established under the provisions of this chapter may be located on property under*
17 *the jurisdiction of the Recreation and Park Commission upon approval of the Commission. Upon*
18 *receiving a request to locate a market on property under the jurisdiction of the Recreation and Park*
19 *Commission, the Commissioner of Agriculture shall work with the Recreation and Park Department to*
20 *identify possible suitable sites for approval by the Recreation and Park Commission as set forth in the*
21 *Park Code.*

22
23 ***SEC. 9A.4. ADMINISTRATION.***

24 *The Agricultural Commissioner shall administer the operation of each market established under*
25 *the provisions of this Chapter.*

1 **~~SEC. 9A.5. ADVISORY COMMITTEE.~~**

2 ~~For each market established under the provisions of this Chapter, the Agricultural~~
3 ~~Commissioner shall appoint a committee consisting of at least 3 persons with valid permission to sell at~~
4 ~~the market. Each committee member shall hold office only at the pleasure of the Agricultural~~
5 ~~Commissioner. Each committee shall advise the Agricultural Commissioner as to the general policies~~
6 ~~under which that committee's market shall be conducted and generally as to the character and nature~~
7 ~~of the products to be sold therein. The Agricultural Commissioner shall investigate all~~
8 ~~recommendations made by each committee and, if he or she deems them proper, shall implement said~~
9 ~~recommendations.~~

10
11 **~~SEC. 9A.6. INSPECTION OF PRODUCTS; COMPLIANCE WITH APPLICABLE LAWS.~~**

12 ~~Each market and all products sold or disposed of or offered for sale in a market shall be subject~~
13 ~~to inspection under and shall comply with and be subject to all local ordinances and regulations and~~
14 ~~all State laws governing the marketing of such products or governing the inspection, quality,~~
15 ~~standardization, weights, measures, quarantine, sanitation, marketing and sale of such products offered~~
16 ~~for sale by private individuals, firms and corporations.~~

17
18 **~~SEC. 9A.7. FEES.~~**

19 ~~Fees currently estimated sufficient to pay the operating and maintenance costs of each market~~
20 ~~and within a reasonable time to liquidate all capital expenditures made thereof, recommended by the~~
21 ~~Agricultural Commissioner, shall be charged to the sellers at each market, effective July 1, 2004, as~~
22 ~~follows:~~

23 ~~(a) Certified Producers~~

24 ~~Daily stall fee:~~

25 ~~— Summer (June 1 through November 30) — \$50.00~~

1 — ~~Winter (December 1 through May 31) 40.00~~

2 — ~~(b) Non-Certified Producers~~

3 — ~~Daily stall fee:~~

4 — ~~Summer (June 1 through November 30) \$60.00~~

5 — ~~Winter (December 1 through May 31) 50.00~~

6
7 **~~SEC. 9A.8. DISTRIBUTION OF SURPLUS COMMODITIES TO NEEDY PERSONS.~~**

8 ~~Whenever there exists a surplus of farm commodities available for distribution to needy persons~~
9 ~~and families in the City and County, the Agricultural Commissioner may authorize the allocation of~~
10 ~~space at any market for distribution of such surplus to needy persons and families; provided:~~

11 ~~(a) That such distribution will not interfere with the normal operations of the market;~~

12 ~~(b) That the distribution shall entail no expense to the City and County other than use of space~~
13 ~~at the market;~~

14 ~~(c) That such distribution shall be for a limited period, in no case to exceed 90 days in any one~~
15 ~~calendar year;~~

16 ~~(d) That recipients of the surplus commodities are certified as needy and eligible for receipt of~~
17 ~~the commodities by the Welfare Department of the City and County; and~~

18 ~~(e) That the commodities are distributed free without any charges whatsoever to recipients.~~

19 ~~No market or other fees shall be charged in connection with distribution of surplus commodities~~
20 ~~as provided in this Section.~~

21
22 **~~SEC. 9A.9. RULES AND REGULATIONS.~~**

23 ~~For each market established under the provisions of this Chapter, the Agricultural~~
24 ~~Commissioner is hereby authorized to make such rules and regulations as he or she shall deem proper~~
25 ~~for the conduct of the market and for the maintenance of sanitary conditions therein and for the~~

1 identification of persons offering products for sale in the market, which rules shall not be in conflict
2 with the provisions of this Chapter but shall be in furtherance thereof. Such rules shall be posted in a
3 conspicuous place in the market and when so posted shall be deemed to be promulgated by the
4 Agricultural Commissioner and shall thereafter have the same force and effect as though included in
5 this Chapter.

6
7 **~~SEC. 9A.10. PERSONS WHO MAY SELL AT MARKET; COMMISSION; REALES.~~**

8 Farm products may be sold or offered for sale at a market only by the grower, producer or
9 fisher thereof or by members of his or her immediate family or by salespeople. No commission shall be
10 paid by the growers or received by other persons involved in the transactions occurring at a market,
11 except such fees as are paid at the market for the privilege of selling the products there. There shall be
12 no resales made at a market.

13
14 **~~SEC. 9A.11. OBSERVANCE OF REGULATIONS; PRODUCTS TO BE KEPT SANITARY.~~**

15 All federal and State laws and regulations, as well as all local ordinances and regulations,
16 applicable to each market and the products offered for sale therein shall be complied with by sellers at
17 the market, and growers, producers or fishers utilizing the facilities of the market shall keep the
18 premises used by them in a clean and sanitary condition and shall remove all fruit, vegetable and fish
19 cuttings, trimmings, wrappings and containers at the close of each day.

20
21 **~~SEC. 9A.12. HOURS OF OPERATION.~~**

22 The days and hours during which each market shall operate shall be fixed by the rules and
23 regulations adopted and promulgated by the Agricultural Commissioner.

24
25 **~~SEC. 9A.13. DESIGNATION OF PERSONS AUTHORIZED TO ENTER PREMISES.~~**

1 All persons are hereby prohibited from entering or remaining on any market premises unless
2 any such person is a person entering or remaining on the market premises with the consent of a duly
3 authorized representative of the Agricultural Commissioner; a person making use of the market
4 facilities with valid permission from a duly authorized representative of the Agricultural
5 Commissioner; an actual or prospective customer; or a person accompanying any such actual or
6 prospective customer.

7
8 **~~SEC. 9A.14. PERMISSION TO SELL—REQUIRED; SCOPE.~~**

9 No person shall sell, keep for sale or offer to sell market or farm produce, edible merchandise,
10 or any other merchandise or product at any market established under the provisions of this Chapter
11 except upon receipt of permission to sell at the market from the Agricultural Commissioner or his or
12 her duly authorized representative. No person with valid permission to sell at a market nor any of his
13 or her agents or employees shall bring onto the market premises, keep in his or her possession, offer to
14 sell or sell any market or farm produce or any edible merchandise which has not been produced on
15 land owned or possessed by, or, in the case of fish, caught or bred by the person. Persons with valid
16 permission to sell at a market may bring onto the market premises, keep in their possession, offer to sell
17 or sell only such market or farm produce and edible merchandise which has been produced on land
18 owned or possessed by, or, in the case of fish, caught or bred by the person. Whenever a person with
19 valid permission to sell at a market violates the provisions of this Section, the Agricultural
20 Commissioner may immediately suspend the person's permission to sell at the market premises for a
21 period of no less than 30 days and no more than 90 days thereafter, as in the discretion of the
22 Agricultural Commissioner shall seem proper.

23
24 **~~SEC. 9A.15. SAME—TERMS AND CONDITIONS.~~**

25 Permission to sell at a market shall be offered only upon the following terms and conditions:

1 ~~(a) The proper completion and filing of an application;~~

2 ~~(b) Compliance with all federal, State and local laws relating to the operation, use and~~
3 ~~enjoyment of the facilities or the market premises;~~

4 ~~(c) Compliance with all rules and regulations of the Agricultural Commissioner regarding use~~
5 ~~of the market facilities.~~

6 ~~(d) Accept forms of payment provided to vendors or market sponsors by participants of~~
7 ~~federal, state or local food assistance programs, including, but not limited to, food stamps, WIC~~
8 ~~Farmers' Market Nutrition Programs, and Senior Farmers' Market Nutrition Programs. Such forms of~~
9 ~~payment include, but are not limited to, coupons, vouchers, Electronic Benefit Transfer (EBT) cards.~~
10 ~~The Agricultural Commissioner shall work with market sponsors or managers who are not currently~~
11 ~~certified to accept any, or all, of these forms of payment to obtain such certification within six months~~
12 ~~of the effective date of this legislation.~~

13
14 ~~**SEC. 9A.16. SAME — EFFECT OF SUSPENSION OR REVOCATION.**~~

15 ~~A person whose permission to sell at a market has been suspended shall be ineligible to apply~~
16 ~~for new permission during the period of his or her suspension. Any person whose permission to sell at a~~
17 ~~market has been revoked shall be ineligible to apply for new permission for a period of two years~~
18 ~~following such revocation unless sooner allowed to qualify by the Agricultural Commissioner. Any~~
19 ~~person whose permission to sell at a market has been suspended more than twice in an 18-month~~
20 ~~period may, upon the occasion giving grounds for a third suspension, have such permission indefinitely~~
21 ~~suspended or revoked in the discretion of the Agricultural Commissioner.~~

22
23 ~~**SEC. 9A.17. APPEALS.**~~

24 ~~Any applicant denied permission to sell at a market or any person whose permission to sell at a~~
25 ~~market has been suspended or revoked by the Agricultural Commissioner may immediately file an~~

1 ~~appeal in writing with the Director of Administrative Services. The Director of Administrative Services~~
2 ~~shall set a time for hearing the appeal which shall be within seven days of the date of filing thereof. The~~
3 ~~appellant shall be notified of the time and place of the hearing in advance thereof and shall be entitled~~
4 ~~to appear at the hearing and be heard. After such hearing the Director of Administrative Services may~~
5 ~~concur in the action of the Agricultural Commissioner, or he or she may overrule the Agricultural~~
6 ~~Commissioner and order that the permission be immediately granted or restored. The Director of~~
7 ~~Administrative Services shall appoint an officer to act on such appeals in his or her absence who shall~~
8 ~~have the same powers with respect thereto as are herein granted the Director of Administrative~~
9 ~~Services.~~

10
11 ~~**SEC. 9A.18. UNLAWFUL ENTRY UPON PREMISES.**~~

12 ~~Any person entering any market premises in violation of Section 9A.13 of this Code and any~~
13 ~~person remaining on any market premises after being ordered to leave by any duly authorized~~
14 ~~representative of the Agricultural Commissioner are hereby declared to be trespassers and guilty of a~~
15 ~~misdemeanor and upon arrest and conviction shall be punished by not more than a \$50 fine or by~~
16 ~~imprisonment in the County Jail for not more than 10 days, or by both such fine and imprisonment.~~

17
18 ~~**SEC. 9A.19. VIOLATION OF SECTION 9A.14 OF THIS CODE.**~~

19 ~~Any person who either personally or through his or her agents or employees violates Section~~
20 ~~9A.14 of this Code shall be guilty of a misdemeanor and upon arrest and conviction shall be punished~~
21 ~~by a fine of not more than \$500 or by imprisonment in the County Jail for not more than 30 days, or by~~
22 ~~both such fine and imprisonment.~~

23
24 ~~**SEC. 9A.20. NEEDS ASSESSMENT.**~~

1 *In order to support low income access to healthy, local produce by low-income San*
2 *Franciscans, as well as to provide additional markets for regional farmers, the Agriculture*
3 *Commissioner shall conduct a needs assessment of neighborhoods in San Francisco that could support*
4 *additional farmers markets without impacting the viability of locally owned businesses. This needs*
5 *assessment shall primarily focus on identifying the best location for farmers' markets in underserved*
6 *neighborhoods. This needs assessment shall be submitted to the Clerk of Board of Supervisors on an*
7 *annual basis.*

8
9 **SEC. 9A.1. DEFINITIONS.**

10 *The following definitions apply to this Chapter 9A:*

11 *"Agricultural Product" has the meaning set forth in Section 47000.5(a)(1) of the California*
12 *Food and Agricultural Code, as may be amended from time to time.*

13 *"Certified Farmers' Market" has the meaning set forth in Section 1392.2(a) of Title 3 of the*
14 *California Code of Regulations, as may be amended from time to time.*

15 *"Certified Producer" has the meaning set forth in Section 1392.2(e) of Title 3 of the California*
16 *Code of Regulations, as may be amended from time to time.*

17 *"City" means the City and County of San Francisco.*

18 *"City-Operated Farmers' Market" means a Certified Farmers' Market established and*
19 *maintained by the City under Section 9A.6 of this Chapter 9A.*

20 *"Director of Property" means the person holding the position described in Administrative Code*
21 *Section 2A.110, and includes the Director's designee.*

22 *"Market Operator" means a Certified Producer, a group of Certified Producers, a nonprofit*
23 *organization, or a City agency, that operates a Certified Farmers' Market and adopts rules and*
24 *requirements necessary for its operation.*

1 "Producer" has the meaning set forth in Section 47000.5(c) of the California Food and
2 Agricultural Code, as may be amended from time to time.

3 "Vendor" means a person who sells only products other than Agricultural Products at a
4 Certified Farmers' Market.

5
6 **SEC. 9A.2. AUTHORITY OF THE COUNTY AGRICULTURAL COMMISSIONER; FEES.**

7 (a) As set forth in Chapter 10.5 of Division 17 of the California Food and Agricultural Code
8 and its implementing regulations, the County Agricultural Commissioner is authorized to exercise
9 oversight of local farmers' markets by: certifying farmers' markets and Producers, conducting
10 inspections of Certified Farmers' Markets, and engaging in enforcement of Chapter 10.5 and its
11 implementing regulations through the imposition of penalties and the denial, suspension, or revocation
12 of certifications.

13 (b) As set forth in Section 1.10-1 of the Administrative Code, the County Agricultural
14 Commissioner shall impose a fee for the issuance, modification, verification, and renewal of a farmers'
15 market certificate for a Certified Farmers' Market. This fee may be waived for a City-Operated
16 Farmers' Market administered by the Director of Property under the authority of Section 9A.6.

17 (c) The County Agricultural Commissioner may charge a fee in the amount of \$113 per
18 hour to defray the costs of conducting inspections of Certified Farmers' Markets, where such
19 inspections are unrelated to the issuance, modification, verification, and/or renewal of a farmers'
20 market certificate. This fee may be waived for the inspection of a City-Operated Farmer's Market
21 administered by the Director of Property under the authority of Section 9A.6.

22
23 **SEC. 9A.3. REGISTRATION AND CERTIFICATION REQUIRED.**

24 It shall be unlawful to operate a farmers' market in which Producers sell Agricultural Products
25 directly to customers within the City without registering with the California Department of Food and

1 Agriculture, and obtaining and maintaining a Certified Farmers' Market certificate from the County
2 Agricultural Commissioner.

3
4 **SEC. 9A.4. LOCATION.**

5 A Market Operator may operate a Certified Farmers' Market at the following locations:

6 (a) At any place that complies with the Planning Code, subject to approval by the owner of
7 the real property;

8 (b) On property under the jurisdiction of the Recreation and Park Commission, subject to
9 approval of the Commission, as set forth in Section 7.21 of the Park Code;

10 (c) On property under the jurisdiction of the Port Commission, subject to approval of the
11 Port Commission; or

12 (d) On other property owned by the City, subject to approval of the Director of Property, or
13 in cases of property under the exclusive control of a board or commission, with the approval of the
14 board or commission.

15
16 **SEC. 9A.5. OPERATING STANDARDS.**

17 (a) All Market Operators, Producers, and Vendors shall comply with all otherwise
18 applicable State and City laws, including but not limited to state law requirements governing Certified
19 Farmers' Markets, as set forth in Chapter 10.5 of Division 17 of the California Food and Agricultural
20 Code, as amended from time to time, and its implementing regulations, and all State and local laws and
21 regulations governing food handling and sanitation.

22 (b) As set forth in Section 1009.22 of the Health Code, smoking is prohibited in all farmers'
23 markets, whether on public or private property.

24 (c) All Certified Farmers' Markets shall accept forms of payment from participants in
25 federal, state, or City food assistance programs, including but not limited to the Special Supplemental

1 Nutrition Program for Women, Infants, and Children (WIC), the Supplemental Nutrition Assistance
2 Program (SNAP), and the Electronic Benefits Transfer Project (EBT).

3
4 **SEC. 9A.6. CITY-OPERATED FARMERS' MARKETS; FEES.**

5 **(a) Authority of Director of Property.**

6 (1) The Director of Property is authorized to establish, maintain, administer, and
7 manage one or more Certified Farmers' Markets for the sale of nonagricultural and Agricultural
8 Products.

9 (2) The Director of Property may adopt rules, regulations, and guidelines to carry out
10 the provisions and purposes of this Section 9A.6 and as set forth in Section 1392.6 of Title 3 of the
11 California Code of Regulations.

12 **(b) Financing; Fees.**

13 (1) Maintenance and operation of each Certified Farmers' Market established by the
14 Director of Property shall be financed by fees charged to Certified Producers and Vendors who utilize
15 the facilities, and by funds as may be appropriated by ordinance in accordance with the budgetary
16 procedure of the Charter.

17 (2) Certified Producers must pay a fee of \$50 per day to sell at a City-Operated
18 Farmers' Market. Vendors must pay a fee of \$85 per day to sell at a City-Operated Farmers' Market.

19 **(c) Permission to Sell.** No person may sell products at a City-Operated Farmers' Market
20 without completing an annual application and receiving approval from the Director of Property.
21 Producers that do not have a valid Certified Producer certificate issued from a County agricultural
22 commissioner in California shall not be approved to sell Agricultural Products in a City-Operated
23 Farmers' Market.

24 **(d) Suspension or Revocation of Permission to Sell; Appeal Procedure.**

1 (1) Following notice and an opportunity to be heard, the Director of Property may
2 suspend or revoke permission to sell at a City-Operated Market for a violation of Chapter 10.5 of
3 Division 17 of the California Food and Agricultural Code and its implementing regulations, this
4 Chapter 9A, or applicable market rules and regulations, and/or for lack of proper certification or
5 licensing.

6 (2) No suspension may exceed 30 days. After the end of a suspension period, the
7 approval of the Producer or Vendor shall be automatically reinstated.

8 (3) Upon revocation of permission to sell at a City-Operated Farmers' Market, the
9 Producer or Vendor shall be ineligible to reapply for permission to sell at any City-Operated Farmers'
10 Market for one year from the date of revocation.

11 (4) Any person whose permission to sell at a City-Operated Farmers' Market has
12 been suspended or revoked by the Director of Property may file an appeal in writing with the City
13 Administrator, not later than 20 days after receipt of the notice of the decision.

14 (A) The City Administrator or the City Administrator's designee shall set a
15 time for hearing the appeal, which shall be within seven days of the date of filing, unless there is mutual
16 consent to a later date for hearing the appeal.

17 (B) The appellant shall be promptly notified of the time and place of the
18 hearing and entitled to appear and be heard at the hearing.

19 (C) After the hearing, the City Administrator may concur in the action of the
20 Director of Property, may modify the order by reducing the penalty, or may overrule the Director of
21 Property and order that the permission be immediately granted or restored.

22 (D) The City Administrator shall issue a brief, written statement of the
23 decision, including findings supporting the decision.
24
25

1 (E) The City Administrator may appoint a hearing officer in lieu of the City
2 Administrator to act on such appeals, in which case the hearing officer shall have the same powers as
3 the City Administrator and the hearing officer's decision shall be binding.

4 (e) Persons Authorized to Enter Premises. Access to and use of City-Operated Farmers'
5 Markets is subject to these restrictions:

6 (1) All persons are prohibited from entering, remaining, or parking on the premises
7 of a City-Operated Farmers' Market during market hours, unless they are a Certified Producer,
8 Vendor, customer, a person engaging in work relating to the operation of the City-Operated Farmers'
9 Market, or a person on the premises with the consent of the Director of Property or the Director's
10 designee.

11 (2) All persons are prohibited from entering, remaining, or parking on the premises
12 of a City-Operated Farmers' Market during hours when the market is not in operation, without
13 permission from the Director of Property.

14 (3) Any person in violation of this subsection (e), and any person remaining on any
15 market premises after being ordered to leave by the Director of Property, may be charged as a
16 trespasser and punished by a fine of not more than \$500.

17 (f) Advisory Committees. For each City-Operated Farmers' Market, the Director of
18 Property shall appoint a committee consisting of at least three persons with permission to sell at the
19 market. Each committee member shall serve at the pleasure of the Director of Property. Each
20 committee shall advise the Director of Property as to the general policies under which that committee's
21 market should be conducted and generally as to the character and nature of the products to be sold
22 there. The Director of Property shall consider all recommendations made by each committee and may,
23 in the exercise of discretion, accept, reject, or modify said recommendations, and implement them as
24 the Director deems appropriate.

1 **SEC. 9A.7. PREEMPTION.**

2 Nothing in this Chapter 9A shall be interpreted or applied as to create any requirement, power,
3 or duty in conflict with any federal or state law.

4 Section 2. Chapter 9B of the Administrative Code is hereby amended by revising
5 Sections 9B.1, 9B.2, 9B.4, 9B.5, 9B.6, 9B.7, 9B.8, and 9B.9, and adding Sections 9B.10 and
6 9B.11, to read as follows:

7
8 **SEC. 9B.1. ESTABLISHMENT AUTHORIZED; APPROVED SALES.**

9 The ~~Agricultural Commissioner~~ Director of Property is authorized to establish, maintain,
10 and direct in the City and County a Flea Market for the sale of collectibles, antiques, and other
11 goods by the owners thereof.

12
13 **SEC. 9B.2. HOW KNOWN; FINANCES FOR MAINTENANCE AND OPERATION.**

14 The Market created under ~~the provisions of the preceding~~ Section 9B.1 shall be known as the
15 Flea Market. Its maintenance and operation shall be financed under Section 9B.5 by fees
16 charged to vendors who utilize the facilities of the Flea Market and by such other funds as
17 may be appropriated therefor in accordance with the budgetary procedure of the Charter.

18
19 **SEC. 9B.4. ADMINISTRATION.**

20 The ~~Agricultural Commissioner~~ Director of Property shall administer the operation of the Flea
21 Market.

22
23 **SEC. 9B.5. FEES.**

1 Each vendor at the Flea Market shall pay a daily fee of \$4550 per stall for each day on
2 which the vendor he or she sells. A vendor who pays in advance for an entire month shall receive a 10
3 percent discount on the total charge for that month.

4
5 **SEC. 9B.6. RULES AND REGULATIONS.**

6 The ~~Agricultural Commissioner~~ Director of Property is hereby authorized to make such
7 rules and regulations as the Director he or she shall deem necessary and proper for admission
8 to the Flea Market, assignment of stall space at the Flea Market, ~~expulsion suspension or~~
9 ~~revocation of permission to vend at from~~ the Flea Market, maintenance of sanitary conditions at
10 the Flea Market, and safe and orderly conduct of the Flea Market, which rules shall not be in
11 conflict with the provisions of this Chapter 9B but shall be in furtherance thereof. Such rules
12 shall be posted in a conspicuous place or places in the Flea Market.

13
14 **SEC. 9B.7. PERMISSION TO SELL.**

15 Every person has the right to apply for the privilege to sell at the Flea Market provided that the
16 prospective seller he or she meets the following terms and conditions:

17 (a) Files and completes an application, on a form to be prescribed by the Director of
18 Property, which may include a hold harmless agreement and an agreement to abide by the
19 Flea Market rules and regulations;

20 (b) Agrees to comply with the requirements of all ordinances relating to the operation,
21 use, and enjoyment of the facilities or the Flea Market premises; and

22 (c) Agrees to comply with all rules and regulations of the ~~Agricultural Commissioner~~
23 Director of Property regarding use of the Flea Market facilities.

24
25 **SEC. 9B.8. EXPULSIONSUSPENSION OR REVOCATION OF PERMISSION TO SELL.**

1 ~~The Agricultural Commissioner or his or her duly authorized representative may expel a vendor~~
2 ~~from the Market for up to 18 months for violating any provision of this Chapter or any rule or~~
3 ~~regulation promulgated under the authority of this Chapter. The expulsion must be in writing and must~~
4 ~~provide the grounds for the expulsion and inform the affected party of the appeal process allowed in~~
5 ~~Section 9B.9 of this Code. A vendor who has been expelled from the Market shall be ineligible to apply~~
6 ~~for permission to sell at the Market for the duration of the expulsion. Any vendor who has been expelled~~
7 ~~from the Market more than twice in a five-year period may, upon the occasion giving grounds for a~~
8 ~~third expulsion, be indefinitely expelled from the Market. (a) Following notice and an opportunity to~~
9 ~~be heard, the Director of Property may suspend or revoke permission to sell at the Flea Market for a~~
10 ~~violation of this Chapter 9B, applicable Flea Market rules and regulations, and/or for lack of proper~~
11 ~~certification or licensing.~~

12 ~~(b) No suspension shall exceed 30 days. After the end of a suspension period, the approval~~
13 ~~of the vendor shall be automatically reinstated.~~

14 ~~(c) Upon revocation of permission to sell at the Flea Market, the Producer or Vendor shall~~
15 ~~be ineligible to reapply for a period of one year from the date of revocation.~~

17 **SEC. 9B.9. APPEALS.**

18 ~~Within 10 days of the date of the written decree of expulsion, any vendor expelled from the~~
19 ~~Market for any period of time may file an appeal in writing with the Director of Administrative~~
20 ~~Services. The Director of Administrative Services shall set a time for hearing the appeal which shall be~~
21 ~~within 30 days of the date of filing thereof and the Director of Administrative Services or his or her~~
22 ~~designee shall conduct the hearing. The vendor shall be notified of the time and place of the hearing in~~
23 ~~advance thereof and shall be entitled to appear at the hearing and be heard. After such hearing, the~~
24 ~~Director of Administrative Services may by written order and findings concur in, modify or overrule the~~
25 ~~expulsion. The timely filing of an appeal shall stay the expulsion until the conclusion of the appeal. (a)~~

1 Any person whose permission to sell at the Flea Market has been suspended or revoked by the Director
2 of Property may file an appeal in writing with the City Administrator, not later than 20 days after
3 receipt of the notice of the decision.

4 (b) The City Administrator or the City Administrator's designee shall set a time for hearing
5 the appeal, which shall be within seven days of the date of filing, unless there is mutual consent to a
6 later date for hearing the appeal.

7 (c) The appellant shall be promptly notified of the time and place of the hearing and entitled
8 to appear and be heard at the hearing.

9 (d) After the hearing, the City Administrator may concur in the action of the Director of
10 Property, may modify the order by reducing the penalty, or may overrule the Director of Property and
11 order that the permission be immediately granted or restored.

12 (e) The City Administrator shall issue a brief, written statement of the decision, including
13 findings supporting the decision.

14 (f) The City Administrator may appoint a hearing officer in lieu of the City Administrator to
15 act on such appeals, in which case the hearing officer shall have the same powers as the City
16 Administrator and the hearing officer's decision shall be binding.

17
18 **SEC. 9B.10. DESIGNATION OF PERSONS AUTHORIZED TO ENTER PREMISES.**

19 Access to and use of the Flea Market is subject to these restrictions:

20 (a) All persons are prohibited from entering, remaining, or parking on the premises of the
21 Flea Market during Flea Market hours unless they are a vendor, a customer, a person engaging in
22 work relating to the operation of the Flea Market, or are on the premises with the consent of the
23 Director of Property or the Director's designee.

1 **(b) All persons are hereby prohibited from entering, remaining, or parking on the premises**
2 **of the Flea Market at any time other than during the Flea Market's hours without consent of the**
3 **Director of Property.**

4 **(c) Any person in violation of this Section 9B.10 who remains on any Flea Market premises**
5 **after being ordered to leave by the Director of Property may be charged as a trespasser and shall be**
6 **punished by a fine of not more than \$500.**

7
8 **SEC. 9B.11. PREEMPTION.**

9 **Nothing in this Chapter 9B shall be interpreted or applied as to create any requirement, power,**
10 **or duty in conflict with any federal or state law.**

11
12 Section 3. Chapter 1 of the Administrative Code is hereby amended by revising
13 Section 1.10-1, to read as follows:

14
15 **SEC. 1.10-1. FARMERS' MARKET CERTIFICATION FEE.**

16 (a) Imposition of Fee. The County Agricultural Commissioner is hereby authorized to
17 impose a fee for the issuance, modification, verification and renewal of a farmers' market
18 certificate for any "certified farmers' market," as defined in Title 3 of the California Code of
19 Regulations, Section 1392.2(a), as may be amended from time to time, operating within the City
20 and County of San Francisco. ~~Such fee shall be equal to \$500 for the issuance, modification,~~
21 ~~verification or renewal of any such farmers' market certificate.~~ For purposes of this Section 1.10-1, a
22 "vendor" includes persons who sell agricultural products and persons who sell non-agricultural
23 products. The fees to be charged are:

24 For a Certified Farmers' Market with fewer than 16 vendors: \$500

25 For a Certified Farmers' Market with 16 – 45 vendors: \$1,000

1 For a Certified Farmers' Market with more than 45 vendors: \$1,500

2 (b) Procedures. The County Agricultural Commissioner may develop procedures for
3 the collection of any fee authorized by this Section 1.10-1.

4 ~~(c) Effective Date. This Section shall be effective as of October 1, 1995.~~

5 (c) Beginning with fiscal year 2019-2020 and annually thereafter, the fees set forth in this
6 Section 1.10-1 may be adjusted each year, without further action by the Board of Supervisors, as set
7 forth in this subsection. Not later than April 1, the Director of the Department of Public Health shall
8 report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal
9 year's costs of operation. Not later than May 15, the Controller shall determine whether the current
10 fees have produced or are projected to produce revenues sufficient to support the costs of providing the
11 services for which the fee is assessed, and that the fees will not produce revenue that is significantly
12 more than the costs of providing the services for which the fee is assessed. The Controller shall, if
13 necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate, to ensure
14 that the program recovers the costs of operation without producing revenue that is significantly more
15 than such costs. The adjusted rates shall become operative on July 1.

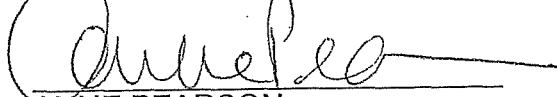
16
17 Section 4. Effective Date. This ordinance shall become effective 30 days after
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
20 of Supervisors overrides the Mayor's veto of the ordinance.

21
22 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
23 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
24 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
25 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

3

4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: 
7 ANNE PEARSON
Deputy City Attorney

8 n:\egana\as2018\1800691\01369191.docx

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LEGISLATIVE DIGEST

[Administrative Code - Farmers' Markets and Flea Markets]

Ordinance amending the Administrative Code to affirm the County Agricultural Commissioner's authority under state law to certify and inspect farmers' markets and producers, and to enforce state law governing the direct marketing of agricultural products to consumers; replace the County Agricultural Commissioner with the Director of Property as the operator of City-operated farmers' markets and flea markets; eliminate the allocation of space at farmers' markets for the distribution of surplus commodities to needy persons; increase the permit fees for certified producers and other vendors; and increase the permit fees for farmers' market operators.

Existing Law

State law regulates the direct marketing of agricultural products to consumers, and establishes standards for certified farmers' markets and producers. State law requires certified farmers' markets to obtain a certificate from the County Agricultural Commissioner's office, which is charged with inspecting farmers' markets and ensuring compliance with state and local law.

Local law currently regulates farmers' markets by:

- Authorizing the County Agricultural Commissioner to establish and maintain farmers' markets in the City, and to impose a fee of \$50 on certified producers, and a fee of \$60 on non-certified producers, which fees are reduced by \$10 in winter;
- Authorizing the Agricultural Commissioner to establish rules governing the operation of farmer's markets;
- Authorizing the imposition of a fee of \$500 on non-City entities that operate farmers' markets;
- Establishing an advisory committee for City-operated farmers' markets;
- Authorizing the County Agricultural Commissioner to allocate space for the distribution of surplus commodities be distributed to needy persons;
- Establishing procedures by which a person may appeal the denial, suspension, or revocation of permits
- Establishing other conditions of participation as a farmers' market operator or producer.

Local law currently regulates flea markets by authorizing the County Agricultural Commissioner to establish and maintain a Flea Market, and to impose a vendor fee of \$45 per stall per day. Local law also authorizes the County Agricultural Commissioner to adopt rules

governing the operation of a City Flea Market, and establishes procedures by which a person may appeal the denial, suspension, or revocation of permits.

Amendments to Current Law

With respect to the operation of farmers' markets, the proposed ordinance would:

- Reaffirm the authority of the County Agricultural Commissioner to exercise oversight of local farmers' markets by: certifying farmers' markets and producers, conducting inspections of certified farmers' markets, and engaging in enforcement of state law governing farmers' markets.
- Replace the Agricultural Commissioner with the Director of Property as the entity authorized to operate City-operated farmers markets, and authorize the Director of Property to:
 - Receive and approve applications for permits to sell products at a City-operated farmers' market, and to administer appeals of permit denials, suspensions and revocations;
 - Appoint and form an advisory committee for a City-operated farmers market;
 - Impose fees of \$50 per day on certified producers, and \$85 per day on other vendors at City-operated farmer's' markets;
- Increase the annual permit fee for farmers' market operators to \$500 for farmers' markets with fewer than 16 vendors, \$1,000 for farmers' markets with 16-45 vendors, and \$1,500 for farmers' markets with more than 45 vendors, while allowing the Agricultural Commissioner to waive such fees for City-operated farmers' markets.
- Authorize the Agricultural Commissioner to charge a fee of \$113 per hour for inspections that are unrelated to the issuance, modification, or renewal of a farmers' market certificate.

With respect to the operation of flea markets, the proposed ordinance would replace the Agricultural Commissioner with the Director of Property as the entity authorized to administer a City flea market and promulgate regulations to govern its operations. The proposed ordinance would adjust the vendor fee from \$45 to \$50 per stall per day.

Background Information

Currently, the Director of Property serves as the operator of the Alemany Farmers' Market, located at 100 Alemany Boulevard, and the Alemany Flea Market, located on the same site. The proposed ordinance would codify the Director of Property's oversight role with respect to the Alemany Farmer's Market and Flea Market, while reaffirming the Commissioner of Agriculture's duty to exercise oversight of local farmers' markets by: certifying farmers' markets and producers, conducting inspections of certified farmers' markets and enforcing state and local laws relating to food safety standards at farmers' markets.

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OFFICE OF THE CITY ADMINISTRATOR



London M. Breed Mayor
Naomi M. Kelly, City Administrator

MEMORANDUM

To: Clerk of the Board of Supervisors

From: Bill Barnes ^(B)
Senior Advisor, Office of the City Administrator

Re: Legislative Introduction
Farmer's Markets and Flea Markets

Date: August 26, 2019

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 AUG 26 AM 11:39
JK

Attached, please find an ordinance for introduction to clarify procedures at City owned farmers' and flea markets. The ordinance would codify the Director of Property's role with respect to the Alemany Farmers' Market and Flea Market while reaffirming the Commissioner of Agriculture's duty to exercise oversight of local farmers' markets.

Please direct questions to Claudia Gorham, Deputy Managing Director of the Real Estate Division at 415-554-9871 or Claudia.Gorham@sfgov.org.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Naomi Kelly, City Administrator
Andrico Penick, Director, Real Estate Division
Phil Ginsburg, General Manager, Recreation and Parks

FROM: Victor Young, Assistant Clerk *Victor Young*
Rules Committee

DATE: September 11, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following legislation on September 3, 2019:

File No. 190869

Ordinance amending the Administrative Code to affirm the County Agricultural Commissioner's authority under state law to certify and inspect farmers' markets and producers, and to enforce state law governing the direct marketing of agricultural products to consumers; replace the County Agricultural Commissioner with the Director of Property as the operator of City-operated farmers' markets and flea markets; eliminate the allocation of space at farmers' markets for the distribution of surplus commodities to needy persons; increase the permit fees for certified producers and other vendors; and increase the permit fees for farmers' market operators.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Lynn Khaw, Office of the City Administrator
Lihmei Lei, Office of the City Administrator
Sarah Madland, Recreation and Parks
Margaret McArthur, Recreation and Parks

BOARD of SUPERVISORS



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NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO RULES COMMITTEE

NOTICE IS HEREBY GIVEN THAT the Rules Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: Monday, November 18, 2019

Time: 10:00 a.m.

Location: Committee Room 263, located at City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco, CA

Subject: File No. 190869. Ordinance amending the Administrative Code to affirm the County Agricultural Commissioner's authority under state law to certify and inspect farmers' markets and producers, and to enforce state law governing the direct marketing of agricultural products to consumers; replace the County Agricultural Commissioner with the Director of Property as the operator of City-operated farmers' markets and flea markets; eliminate the allocation of space at farmers' markets for the distribution of surplus commodities to needy persons; increase the permit fees for certified producers and other vendors; and increase the permit fees for farmers' market operators.

If the legislation passes, the following fees will be increased or established:

The County Agricultural Commissioner may charge a fee of \$113 per hour to defray the cost of conducting inspections of Certified Farmers' Markets.

Certified Producers must pay a fee increased from a variable/seasonal rate to a flat rate of \$50 per day to sell at City-Operated Farmers' Markets. Vendors must a fee of \$85 per day to sell at a City Operation Farmers' Market.

Each vendor at the Flea Market shall pay a daily fee increased from \$45 to \$50 per stall for each day on which the vendor sells.

The County Agricultural Commissioner is authorized to impose a fee for the issuance, modification, verification and renewal of a Farmers' Market certificate for any certified Farmers' Market as follows:

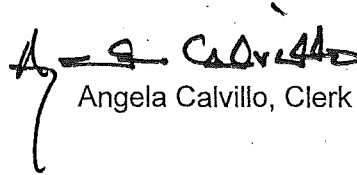
Certified Farmers' Market with fewer than 16 vendors: \$500;

Certified Farmers' Market with 16-45: \$1000; and

Certified Farmers' Market with more than 45 vendors: \$1500.

Beginning with fiscal year 2019/2020, and annually thereafter, the fees set forth in Administrative Code, Chapter 1, Section 1.10-1 "Farmer's Market Certifications Fee" may be adjusted each year, without further action by the Board of Supervisors. The Controller shall, if necessary, adjust the fees upwards or downward for the upcoming fiscal year, as appropriate, to ensure that the program recovers the costs of operations without producing revenue that is significantly more than such costs.

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public record and shall be brought to the attention of the Members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco CA 94102. Information relating to the proposed fee is available in the Office of the Clerk of the Board. Agenda information relating to this matter will be available for public review on Friday, November 15, 2019.



Angela Calvillo, Clerk of the Board

DATED/POSTED: November 8, 2019
PUBLISHED: November 8, 2019 and November 15, 2019