

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: December 27, 2021

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 211292

Ordinance amending the Public Works Code to regulate vending, require permits for vending, and authorize permit fees and enforcement actions; amending provisions of the Business and Tax Regulations and Police Codes to conform with those amendments; amending the Port Code to merge its permit program with the Public Works permit program; repealing reporting provisions from the Health Code; and adopting findings under the California Environmental Quality Act.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ **No Comment**

____ **Recommendation Attached**

Chairperson, Small Business Commission

c: Kerry Birnbach

1 [Various Codes - Street Vendor Regulation]

2

3 **Ordinance amending the Public Works Code to regulate vending, require permits for**
 4 **vending, and authorize permit fees and enforcement actions; amending provisions of**
 5 **the Business and Tax Regulations and Police Codes to conform with those**
 6 **amendments; amending the Port Code to merge its permit program with the Public**
 7 **Works permit program; repealing reporting provisions from the Health Code; and**
 8 **adopting findings under the California Environmental Quality Act.**

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

13

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

15 Section 1. Environmental Findings.

16 The Planning Department has determined that the actions contemplated in this
 17 ordinance comply with the California Environmental Quality Act (California Public Resources
 18 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
 19 Supervisors in File No. _____ and is incorporated herein by reference.

20

21 Section 2. General Background and Findings.

22 (a) The City and County of San Francisco ("City") is committed to supporting the
 23 growth of City jobs and providing space for new and expanding businesses, while maintaining
 24 public health, safety, and welfare.

25

1 (b) United Nations Plaza (“UN Plaza”) is a 1.66-acre public square that is a key
2 entrance point to the City’s busy Civic Center. UN Plaza has longstanding public safety,
3 health, and welfare challenges due in part to unregulated vending and criminal activity in the
4 area. Unregulated vending contributes to congestion at UN Plaza resulting in the obstruction
5 of pedestrian and chair-user access to the public right-of-way, obstruction of first responders’
6 lines of sight, and concealment of unlawful activity. Unregulated vending at UN Plaza fuels
7 unlawful activity that leads to a high volume of 9-1-1 calls, incident reports, and arrests in and
8 around UN Plaza’s immediate vicinity, including 3,733 calls for service, 141 incident reports,
9 and 48 arrests at UN Plaza, in 2021 alone.

10 (c) UN Plaza is home to the Heart of the City Farmers’ Market (“Market”), a
11 nonprofit, independent, farmer-operated food justice organization, that has served San
12 Francisco’s low-income Tenderloin neighborhood since 1981. The Market is the largest
13 farmers’ market Electronic Benefits Transfer (“EBT”) program in California, allowing CalFresh,
14 CalWorks, and other cash benefit recipients to access food and cash benefits. Over 20,000
15 customers rely on the Market for groceries in large part because there are no supermarkets in
16 the Tenderloin neighborhood. Recently, public safety concerns due to unregulated vending
17 and criminal activity have caused the Market to lose five vendors. The unregulated vending
18 and accompanying criminal activity at UN Plaza impact the ability of the City to provide a safe
19 and accessible Market for the public, including families, children, and seniors, as well as the
20 farmers who sell their goods.

21 (d) UN Plaza is heavily patronized year-round. Pre-pandemic, about 25,000 daily
22 weekday San Francisco Municipal Railway (“MUNI”) and Bay Area Rapid Transit (“BART”)
23 public transit riders would access the Civic Center station near UN Plaza, and about 3,500
24 City, state, and federal employees would make their way to work by passing through UN
25 Plaza. Ridership on BART and Muni have continued to rebound since the depths of the

1 pandemic, particularly in 2021, as much of the economy has reopened and many members of
2 the community have received the COVID-19 vaccine. Further, congestion at UN Plaza is
3 heightened on days that the Market is in operation.

4 (e) Vending, because it has a relatively low barrier to entry, encourages
5 entrepreneurship, represents a significant sector of San Francisco’s local economy, and
6 provides economic opportunity for people to support themselves and their families, which is a
7 City priority.

8 (f) A well-designed vending program is beneficial because it: (1) provides minimum
9 standards for vending, including vendors’ equipment; (2) safeguards pedestrian and chair-
10 user movement on sidewalks, streets, and other public spaces; (3) prevents unsanitary
11 conditions and ensures that trash and debris are removed by vendors; and (4) prevents or
12 minimizes public health, safety, and welfare hazards caused or exacerbated by unregulated
13 vending.

14 (g) In 2018, then-Governor Jerry Brown signed Senate Bill 946 (“SB 946”), which
15 decriminalized street vending across California and constrained local regulatory authority. SB
16 946 seeks to create entrepreneurial and economic development opportunities for immigrant
17 and low-income communities, increase consumers’ access to desired goods, contribute to a
18 safe and dynamic public space, and promote the safety and welfare of the public by
19 encouraging local authorities to support and properly regulate vending.

20 (h) The City seeks to prioritize health and safety while expanding economic
21 opportunities for those who aspire to vend lawfully in a manner consistent with SB 946. The
22 City recognizes that regulation of vending benefits the City as a whole, as it leads to orderly
23 commerce and safeguards public health. The City seeks to provide vendors with the ability to
24 operate in a safe and professional manner that enhances the public’s experience while
25 provides increased economic opportunities. To achieve these goals, the City needs to restrict

1 and limit vending in certain areas and under certain circumstances to prevent or minimize
2 public health, safety, and welfare concerns.

3 (i) In 2021, the Port of San Francisco initiated a vending program pursuant to
4 Ordinance No. 118-21 to accommodate vending, including vendors' equipment, while
5 safeguarding pedestrian and chair-user movement on sidewalks, streets, and other public
6 spaces; to prevent unsanitary conditions and ensure trash and debris are removed by
7 vendors; and to protect the scenic and natural character of the Port of San Francisco's parks
8 and waterfront, and the recreational opportunities the areas provide, to ensure the Port's
9 streetscape can remain a vibrant and dynamic marketplace, with unparalleled historic, scenic,
10 and recreational value that can be safely enjoyed by all, which program shall be discontinued
11 and merged with the vending program authorized for the City in this ordinance.

12 (j) This ordinance creates a vending program that provides for permitting and
13 regulation of street vendors on City property that is both meaningfully enforceable and
14 consistent with SB 946.

15
16 Section 3. The Public Works Code is hereby amended by adding Article 5.9, consisting
17 of Sections 5.9-1, 5.9-2, 5.9-3, 5.9-4, 5.9-5, 5.9-6, 5.9-7, 5.9-8, 5.9-9, and 5.9-10, to read as
18 follows:

19 **ARTICLE 5.9: PERMIT REGULATIONS FOR VENDORS**

20 **SEC. 5.9-1. DEFINITIONS.**

21 *For the purpose of this Article 5.9, the following words and phrases have the following*
22 *meanings:*

23 **Administrative Citation.** *An administrative fine for a violation of this Article 5.9, as described*
24 *in Section 5.9-8.*

1 **Certified Farmers' Market.** A farmers' market operated in accordance with California Health
2 Code Section 440(d) and Chapter 10.5 (commencing with section 47000) of Division 17 of the
3 California Food and Agricultural Code, as each may be amended, and any implementing regulations.

4 **City.** The City and County of San Francisco.

5 **Department.** The Department of Public Works.

6 **Director.** The Director of the Department of Public Works or the Director's designee.

7 **Enforcement Official.** Officers, employees, and contractors of the Department, and of such
8 other departments and agencies of the City that the Director authorizes to assist in carrying out
9 enforcement functions in a Memorandum of Understanding or otherwise.

10 **Food.** Any pre-packaged food, foodstuffs, confectionary, condiment, or beverage for human
11 consumption that a Vendor is reselling in its original packaging.

12 **Hallidie Plaza.** The area defined by Section 2.01(b) of the Park Code.

13 **Merchandise.** Any item that is not Food and that is not an art or craft regulated under Article
14 24 (Regulating Street Artists) of the Police Code.

15 **Roaming Vendor.** A Vendor that moves from place to place and stops intermittently to
16 complete a Vending transaction.

17 **Rules and Regulations.** The Rules and Regulations of Vendors as described in Section 5.9-5 of
18 this Article.

19 **Sidewalk Vendor.** Sidewalk Vendor has the meaning set forth in California Government Code
20 Section 51036, as it may be amended.

21 **Stationary Vendor.** A Vendor that Vends from one or more fixed locations.

22 **Swap Meet.** A swap meet operated in accordance with Article 6 (commencing with section
23 21660) of Chapter 9 of Division 8 of the California Business and Professions Code, as it may be
24 amended, and any regulations adopted in accordance with that chapter, as they may be amended.

1 **Vend (and variations such as Vends, Vending).** To sell, offer for sale, expose or display for
2 sale, solicit offers to purchase, or barter Food or Merchandise. Vending includes offering free samples
3 of Food or Merchandise that are also for sale, or negotiating fees for Food or Merchandise.

4 **Vendor.** A person or entity that Vends Food or Merchandise from a pushcart, pedal-driven
5 cart, wagon, or other nonmotorized conveyance, or from one's person or a stand, display, showcase,
6 table, rack, or other movable structure. The term Vendor includes but is not limited to Roaming
7 Vendor, Sidewalk Vendor, and Stationary Vendor. In addition, if a Vendor Vends as an employee or
8 agent of another person or entity, that person or entity is also a Vendor. The term Vendor does not
9 include a person or entity that Vends from a Mobile Food Facility as defined by Public Works Code
10 Section 184.80.

11 **United Nations Plaza.** The area defined by Section 2.01(b) of the Park Code.

12
13 **SEC. 5.9-2. PERMIT REQUIRED; MANDATORY DISPLAY; PROOF OF PURCHASE.**

14 (a) No person may Vend on any City property, including a public right-of-way (as that term
15 is defined in Public Works Code Section 2.4.4) or any other street, sidewalk, alley, walkway, or
16 pedestrian path available to the public, except on property regulated by Article 7 of the Park Code,
17 without first having obtained either a Roaming Vendor permit or a Stationary Vendor permit pursuant
18 to this Article 5.9.

19 (b) A Vendor shall prominently display a valid Vendor permit that corresponds with the
20 Vendor's business activity while Vending in accordance with this Article 5.9.

21 (c) Upon request by an Enforcement Official, a Vendor shall immediately provide proof of
22 ownership or authorization to sell the Food and/or Merchandise that the Vendor is Vending.

23 **SEC. 5.9-3. VENDOR PERMIT TYPE.**

1 (a) The Department shall issue Vending permits to applicants under Section 5.9-4. Each
2 Vendor permit must identify whether the permit authorizes the permittee to Vend Food, Vend
3 Merchandise, or Vend both Food and Merchandise, except as provided in subsection (b).

4 (b) Notwithstanding subsection (a), the Department may issue a time-limited Vendor permit
5 to a nonprofit corporation that is exempt from federal taxation under 26 U.S.C. Section 501(c)(3), as it
6 may be amended, and which permit may apply to multiple Vendors as further described in the permit.

7 **SEC. 5.9-4. PERMIT APPLICATION; FEE.**

8 (a) Department Permit. The Department shall establish a uniform application process
9 through which a Vendor may request, and upon approval receive, a Vendor permit. The permit
10 application shall require:

11 (1) The name, phone number, and current mailing address of the Vendor.

12 (2) A description of the Food and/or Merchandise that the Vendor intends to Vend.

13 (3) The locations where the Vendor requests to Vend.

14 (4) An attestation by the Vendor that they will maintain proof of ownership or
15 authorization to sell the Food and/or Merchandise to Vend and that they will produce the
16 documentation immediately upon request.

17 (5) A certification by the Vendor that to their knowledge and belief, the information
18 submitted for the permit application is true.

19 (6) Proof of Identity, as described in Administrative Code Section 95.2 and as it may
20 be amended, of the Vendor.

21 (7) The California seller's permit number (California Department of Tax and Fee
22 Administration sales tax number), if applicable, of the Vendor.

23 (8) If the Vendor is an agent of an individual, company, partnership, corporation, or
24 other entity (each a "principal"), the name and business address of the principal.

25 (9) Any other information deemed relevant by the Department.

1 **(b) Additional Permit Conditions.**

2 (1) Each permit that applies to a Vendor that uses an energy source, including but
3 not limited to propane, butane, or battery, shall be conditioned on the Vendor obtaining approval from
4 the Fire Marshal and complying with sections of the Fire Code that apply to the use of flammable gas,
5 flammable liquids, compressed gas, open flames, and other energy sources. Separate fees may apply
6 and be payable to the Fire Marshal.

7 (2) Each permit for Food Vending shall be conditioned on the Vendor obtaining a
8 permit to operate a food facility from the Department of Public Health pursuant to Health Code Section
9 452, as it may be amended. Separate fees may apply and be payable to the Department of Public
10 Health.

11 (3) Each Vendor permit issued pursuant to this Article 5.9 and the approval, as
12 applicable, of the Fire Marshal (see subsection (b)(1)) and/or the Department of Public Health (see
13 subsection (b)(2)), shall authorize inspection by the City of the Vendor's operations at any time during
14 operating hours.

15 (4) The applicable conditions of this subsection (b) are preconditions to the issuance
16 of a Vendor permit. Lapse or revocation of approvals, as applicable, from the Fire Marshal or
17 Department of Public Health shall, by operation of law, automatically invalidate any Vendor permit
18 without further action by the Department.

19 **(c) Permit Fee.** The Department shall identify the reasonable regulatory costs for the
20 administrative enforcement and any adjudication of this Article 5.9, including but not limited to the
21 Department's costs to issue permits, perform investigations, conduct inspections, issue administrative
22 citations or other enforcement actions, and audit permittees. The Department shall charge applicants
23 for each Vendor permit and permit renewal an amount that does not exceed the reasonable regulatory
24 costs described in this subsection (c), and may include the actual costs that other agencies, boards,
25 commissions, or departments of the City incur in connection with the processing or administration of

1 this Article 5.9, which fee shall be waived in accordance with California Business and Professions
2 Code Section 16102, as it may be amended, and as applicable. After consulting with the Controller,
3 and by no later than two months after the effective date of the ordinance in Board File No. _____
4 establishing this Article 5.9, the Department shall publish on its website a schedule of all fees charged
5 by the Department under this Section 5.9-4, and shall submit that fee schedule to the Clerk of the Board
6 of Supervisors for inclusion in Board File No. _____. The permit fee shall be adjusted annually in
7 accordance with Public Works Code Section 2.1.2.

8 In addition, separate annual fees may apply and be payable to the Tax Collector, Department of
9 Public Health, and the Fire Marshal for any approvals required by each department.

10 (d) **Permit Fee Waiver.** The Department may adopt regulations that authorize the
11 Director to waive fees for reasons including, but not limited to, economic hardship and a Vendors’
12 status as a nonprofit corporation exempt from federal taxation under 26 U.S.C. Section 501(c)(3), as it
13 may be amended.

14 (e) **Permit Expiration.** Each Vendor permit shall expire one year after issuance by the
15 Department unless renewed or revoked or unless the Director determines on issuance of the permit that
16 the particular circumstances warrant a permit term of less than one year.

17 (f) **Permit Renewal.**

18 (1) Each Vendor permit may be renewed annually so long as the Vendor remains in
19 compliance with this Article 5.9, including payment of all fees due to the City and compliance with the
20 Good Neighbor Policies in Section 5.9-7.

21 (2) Each Vendor permit renewed by the Department shall be operative for 90 days
22 from the date of renewal, but shall become inoperative if by the end of that 90-day period, the Vendor
23 has not obtained approvals, as applicable, from the Fire Department and Department of Public Health.

24 (g) **Application Denial; Appeal.**

25

1 (1) The Department may reject an application for a Vendor permit for any of the
2 following reasons:

3 (A) the applicant failed to provide any required information or prerequisite
4 approvals identified in this Section 5.9-4, or provided incorrect or incomplete information, and failed
5 to correct the application within a reasonable time identified by the Department;

6 (B) the applicant knowingly presented false and material information or
7 knowingly omitted material information;

8 (C) the applicant previously received a permit, which permit was revoked
9 pursuant to Section 5.9-8, and the revocation occurred within one year of the application;

10 (D) the applicant submitted a substantially similar application that was rejected
11 within the past year;

12 (E) the proposed Vending location may lead to or exacerbate objective safety,
13 health, and welfare concerns; or

14 (F) good cause, including but not limited to violations of federal, state, or City
15 law that in the Department's judgment are relevant to whether the applicant would perform as a
16 Vendor in a lawful manner.

17 (2) The applicant may appeal the Department's rejection of an application for a
18 Vendor permit in writing to the Director within 10 days of the rejection. The Director may investigate
19 the rejection and consider any claims by the applicant, and shall either affirm or reverse the rejection
20 within a reasonable time following receipt of the written appeal.

21 **SEC. 5.9-5. VENDING RESTRICTIONS; DELEGATION OF AUTHORITY.**

22 (a) Certified Farmers' Market or Swap Meet. No person, without written approval of the
23 Director, may Vend within the immediate vicinity of a permitted Certified Farmers' Market or a
24 permitted Swap Meet during the operating hours of that Certified Farmers' Market or Swap Meet.

1 **(b) Temporary Special Permit.** *No person, without written approval of the Director, may*
2 *Vend within the immediate vicinity of a temporary special permit issued by the City that authorizes the*
3 *temporary use of, or encroachment in or on, the sidewalk or other public area, including an*
4 *encroachment permit, special event permit, or temporary event permit for purposes including filming,*
5 *parades, or outdoor concerts. This prohibition against Vending shall be effective only for the limited*
6 *duration of the temporary special permit. Any notice, business interruption mitigation, or other rights*
7 *provided to affected businesses or property owners under the temporary special permit shall also be*
8 *provided to any Vendor whom the Director previously specifically permitted to operate within the*
9 *immediate vicinity of the temporary special permit during the period that the temporary special permit*
10 *is effective.*

11 **(c) United Nations Plaza.** *No person, without written approval of the Director may Vend at*
12 *UN Plaza, unless it is an approved seller in the course of a permitted Certified Farmers' Market. The*
13 *Director, in consultation with the General Manager of the Recreation and Park Department or the*
14 *General Manager's designee, may approve a Vending permit at UN Plaza if the Director finds that the*
15 *issuance of such a permit would not undermine objective health, safety, and welfare concerns.*

16 **(d) Hallidie Plaza.** *The Director, in consultation with the General Manager of the*
17 *Recreation and Park Department or the General Manager's designee, may approve a Vending permit*
18 *at Hallidie Plaza.*

19 **(e) Rules and Regulations Authorized.** *The Department may adopt additional*
20 *requirements regulating the time, place, and manner of Vending, including prohibiting Vending in*
21 *certain locations, if the rules and regulations are directly related to objective health, safety, or welfare*
22 *concerns. Such Rules and Regulations may impose, but are not limited to imposing, (A) further*
23 *requirements to maintain sanitary conditions; (B) requirements necessary to ensure compliance with*
24 *the Americans with Disabilities Act of 1990 (Public Law 101-336), as it may be amended, and other*
25 *disability access standards; (C) requirements necessary to ensure the public's use and enjoyment of*

1 natural resources and recreational opportunities; or (D) requirements necessary to prevent an undue
2 concentration of commercial activity that unreasonably interferes with the scenic and natural character
3 of a park. The Department may also adopt rules and regulations related to the administration of this
4 Article 5.9, including but not limited to standards for approving permits.

5 (f) **Port of San Francisco.** The Port Commission and its Executive Director, in
6 consultation with the Department, may adopt additional requirements regulating the time, place, and
7 manner of Vending within the regulatory jurisdiction of the Port of San Francisco, including
8 prohibiting Vending in certain locations, if the rules and regulations are directly related to objective
9 health, safety, or welfare concerns. Such Rules and Regulations may impose, but are not limited to
10 imposing, (1) further requirements to maintain sanitary conditions; (2) requirements necessary to
11 ensure compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), as it may be
12 amended, and other disability access standards; (3) requirements necessary to ensure the public's use
13 and enjoyment of natural resources and recreational opportunities; or (4) requirements necessary to
14 prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and
15 natural character of a park.

16 (g) **Notice of New Requirements.** Any new requirement regulating the time, place, and
17 manner of Vending, including additional areas where vending is prohibited, shall be posted on the
18 Department's website to provide sufficient notice to Vendors.

19 **SEC. 5.9-6. EXEMPTIONS.**

20 (a) This Article 5.9 does not govern:

- 21 (1) Food products being sold as part of a fundraiser by a non-profit entity; or
22 (2) the sale of an art or craft regulated under Article 24 (Regulating Street Artists)
23 of the Police Code; or
24 (3) the operation of, or any sale within, a Certified Farmers' Market; or
25 (4) the operation of, or any sale within, a permitted Swap Meet; or

1 (5) Vending on property regulated by Article 7 of the Park Code; except UN Plaza
2 and Hallidie Plaza; or

3 (6) Vending within areas permitted under Article 6 (Interdepartmental Staff
4 Committee on Traffic and Transportation (“ISCOTT”)) of the Transportation Code.

5 (b) This Article 5.9 does not supersede or alter Article 24 (Regulating Street Artists) of the
6 Police Code. A Vendor permit authorizing the permittee to Vend either Merchandise or Food and
7 Merchandise in accordance with Section 5.9-3 may also Vend an art or craft regulated under Article 24
8 (Regulating Street Artists) of the Police Code if the Vendor has obtained a Street Artist Certificate
9 under Article 24 of the Police Code.

10
11 **SEC. 5.9-7. GOOD NEIGHBOR POLICIES.**

12 Vendors shall operate in accordance with the following good neighbor policies:

13 (a) Vendors shall be individually responsible for any garbage, detritus, or debris that
14 directly results from their Vending activity;

15 (b) Vendors shall contain noise and odors within the immediate area of the Vendor so as not
16 to cause a nuisance to neighbors; and

17 (c) Vendors shall urge patrons to not litter and to maintain the safety, cleanliness, quiet,
18 peace, and orderliness of the area; and

19 (d) Stationary Vendors shall provide for proper and adequate storage and disposal of
20 garbage, detritus, and debris.

21
22 **SEC. 5.9-8. ENFORCEMENT.**

23 (a) Nuisance Declaration. Any violation of this Article 5.9, or of any applicable Rules and
24 Regulations, constitutes a public nuisance.

1 **(b) Notice of Violation.** Any Enforcement Official may issue a Notice of Violation for any
2 violation of this Article 5.9, or the Rules and Regulations that interpret and implement this Article, and
3 as described in subsection 5.9-8(c) below, that occurs on a public right-of-way (as that term is defined
4 in Public Works Code Section 2.4.4) or any other street, sidewalk, alley, walkway, or pedestrian path
5 available to the public. The Notice of Violation shall include: (1) information identifying the Offender,
6 (2) details of the violation, (3) the name or identifying number of the Enforcement Official, and a
7 general description of (4) administrative fines, payment method and options, including the ability-to-
8 pay determination, and (5) the appeals process.

9 **(c) Administrative Citation.** The Department will use the information included in the Notice
10 of Violation to issue an Administrative Citation for any violation of this Article 5.9, or the Rules and
11 Regulations that interpret and implement this Article, as described below, within 15 calendar days of
12 issuing the Notice of Violation:

13 (1) Vending that violates a requirement in this Article 5.9 or in the Rules and
14 Regulations, other than failure to possess a valid license or permit:

15 (A) An administrative fine equal to \$100 for a first violation.

16 (B) An administrative fine equal to \$200 for a second violation within twelve
17 months of the first violation.

18 (C) An administrative fine equal to \$500 for a third violation, and each
19 subsequent violation, within twelve months of the first violation.

20 (D) In addition to any other authorized enforcement activity, the Director may
21 revoke or suspend a Vendor's license and/or permit for the remainder of its term upon a fourth or
22 subsequent violation within twelve months of the first violation.

23 (2) Vending without a valid license or permit:

24 (A) An administrative fine equal to \$250 for a first violation.

1 (B) An administrative fine equal to \$500 for a second violation within twelve
2 months of the first violation.

3 (C) An administrative fine equal to \$1,000 for a third violation, and each
4 subsequent violation, within twelve months of the first violation.

5 (D) If the Vendor submits proof of a valid permit that was effective at the time of
6 the citation, the administrative fines set forth in subsections (A) through (C) of this subsection (c)(2)
7 shall be reduced to equal the administrative fines set forth in subsections (A) through (C) of subsection
8 (c)(1), as those amounts may be revised pursuant to subsection (c)(5).

9 (3) Failure to pay an Administrative Citation described in this subsection (c) shall
10 not be punishable as an infraction or misdemeanor; further, additional fines, fees, assessments, or any
11 other financial conditions beyond those authorized in this subsection (c) may not be assessed.

12 (4) When assessing an Administrative Citation authorized in this subsection (c), the
13 Director shall take into consideration the person's ability to pay the fine using the criteria described in
14 subsection (a) or (b) of California Government Code Section 68632, as it may be amended. The
15 Enforcement Officer shall give notice to the Vendor of the right to request an ability-to-pay
16 determination and instructions or other materials for requesting an ability-to-pay determination. The
17 Vendor may request an ability-to-pay determination at any time while the judgment remains unpaid,
18 including when a case is delinquent or has been referred to a comprehensive collection program. The
19 Director's determination shall be final. If the Vendor meets the ability-to-pay criteria, the Department
20 shall accept 20% of the total administrative fine specified in subsection (c)(1) or (c)(2), as applicable,
21 as full satisfaction.

22 (5) To the extent permitted by State law, the amounts of the administrative fines
23 identified in subsections (A) through (C) of subsections (c)(1) and (c)(2) shall automatically increase or
24 decrease to the maximum amount authorized under California Government Code Section 51039, as it
25 may be amended. If Section 51039 is repealed and not replaced with a similar limitation on

1 administrative fines, then the Director, in consultation with the Controller, may adjust the
2 administrative fine amounts in this Section 5.9-8 each year, without further action by the Board of
3 Supervisors, to reflect changes in the relevant Consumer Price Index.

4 (6) Within 10 days of issuance, the Vendor shall pay the Administrative Citation
5 unless the Vendor files a written appeal with the Director. The grounds of appeal are limited to error
6 or abuse of discretion in the issuance of the Administrative Citation. The Director may make an
7 ability-to-pay determination pursuant to subsection (c)(4), but inability to pay shall not be grounds for
8 rescinding the Administrative Citation or reducing the amount required to satisfy the fine to an amount
9 less than the amount specified in subsection (c)(4). The Director shall consider any claims or defenses
10 by the appellant, and shall issue and mail a written decision on the appeal within a reasonable time of
11 receipt of the written appeal. Within 20 days of the Director's decision upholding a fine in whole or in
12 part, the Vendor shall pay the Administrative Citation. The Vendor may seek judicial review of an
13 Administrative Citation pursuant to subsection (c)(1) in San Francisco Superior Court pursuant to
14 Government Code Section 53069.4.

15 (7) Administrative Citation Issuance Date. For purposes of payment and appeals
16 deadlines, the issuance date of any Administrative Citation delivered by the U.S. Postal Service shall be
17 5 calendar days after the date of mailing.

18 (8) Collection of Fines. The failure of any person to pay a fine assessed by
19 Administrative Citation within the required time constitutes a debt to the City. Simple interest at 10%
20 per year shall accrue on unpaid amounts. The City may file a civil action including a small claims
21 action or may pursue any other legal remedy to collect such money.

22 (d) **Temporary Order to Cease Vending and Removal.**

23 (1) Any Enforcement Official may order a Vendor to promptly cease Vending when,
24 in the judgment of the Enforcement Official, (A) the Vendor constitutes a safety hazard, including but
25

1 not limited to impeding the safe use of a public right-of-way by pedestrians or persons with disabilities,
2 or (B) when the presence of an emergency so requires, or (C) if the Vendor is unpermitted.

3 (2) (A) After the Enforcement Official orders an unpermitted Vendor to cease
4 Vending, the Vendor must discontinue any Vending and remove all Food, Merchandise, and any other
5 Vending paraphernalia from property within the City's jurisdiction. A failure to promptly obey any
6 such order from an Enforcement Official is a violation of this Article 5.9.

7 (B) After the Enforcement Official orders a permitted Vendor to cease Vending,
8 the Vendor must discontinue any Vending and follow the orders of the Enforcement Official with regard
9 to removing and relocating all Food, Merchandise, and any other Vending paraphernalia, and any
10 other orders the Enforcement Official may give to mitigate safety hazards, and no further Vending may
11 occur until the conditions that caused the order to cease Vending have been abated to the satisfaction
12 of the Enforcement Official. A failure to promptly obey any such orders from an Enforcement Official
13 is a violation of this Article 5.9.

14 (3) If a Vendor fails, within a reasonable time, to remove Food, or Merchandise, or
15 any other Vending paraphernalia from the location subject to the order to cease Vending, or fails to
16 follow any other orders the Enforcement Official may issue to mitigate safety hazards, the Enforcement
17 Official or the Department may remove any or all of the items. Prior to removal by the Enforcement
18 Official or the Department, the Enforcement Official shall warn the Vendor of the impending removal
19 and impoundment, and shall urge the Vendor to make every effort to remove the items, or cause their
20 removal. Where the Department actually removes any items, the Enforcement Official shall issue an
21 Administrative Citation to the Vendor. The Vendor shall pay the actual costs of removal and storage of
22 any items impounded, and of disposal of any items the storage of which may cause public health, safety,
23 or infestation issues. The Vendor may contest the liability for these costs by timely appealing the
24 Administrative Citation. However, these actual costs to the City are not subject to reduction based on
25 the ability to pay; actual costs are a debt to the City that may be collected in the same manner as

1 provided in subsection (c)(8). Vendor items that have been removed and stored may be recovered by
2 the Vendor within 90 days from the date of removal and upon payment of a sum equal to the costs of
3 removal, plus any reasonable transport and storage costs, as determined by the Department, and any
4 costs incurred by the Department in disposing of any items.

5 (e) **Other Violations.** Any violation of this Article 5.9, or of the Rules and Regulations, may
6 be subject to one or more of the following:

7 (1) An administrative fine as described in subsection (c).

8 (2) Civil Action.

9 (A) The Department may refer violations to the City Attorney to maintain an
10 action for injunction to restrain to cause the correction or abatement of the violation of this Article 5.9,
11 and for recovery of any City department's enforcement and abatement costs (including but not limited
12 to costs for removal, storage, impoundment, and disposal).

13 (B) The City shall be awarded its reasonable attorney's fees and costs incurred
14 in enforcing this Article 5.9.

15 **SEC. 5.9-9. UNDERTAKING FOR THE GENERAL WELFARE.**

16 In enacting and implementing this Article 5.9, the City is assuming an undertaking only to
17 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
18 obligation for breach of which it is liable in money damages to any person who claims that such breach
19 proximately caused injury.

20 **SEC. 5.9-10. SEVERABILITY.**

21 If any section, subsection, sentence, clause, phrase, or word of this Article 5.9, or any
22 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
23 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
24 portions or applications of the Article. The Board of Supervisors hereby declares that it would have
25 passed this Article 5.9 and each and every section, subsection, sentence, clause, phrase, and word not

1 declared invalid or unconstitutional without regard to whether any other portion of the Article or
2 application thereof would be subsequently declared invalid or unconstitutional.

3
4 Section 4. Article 9.6 of the Police Code is hereby amended by revising Section 660.2,
5 to read as follows:

6 **SEC. 660.2. UNLAWFUL SOLICITATION.**

7 * * * *

8 (h) No individual shall engage in sales solicitations for charitable purposes by
9 means of selling goods, products, services, or merchandise on the public sidewalks:

10 (1) Within five feet of any of the following:

11 * * * *

12 (b) A person Vending Food, and/or Merchandise, pursuant to any
13 applicable permit ~~issued under Article 2A of the Port Code~~, including but not limited to a permit
14 issued under Article 5.9 of the Public Works Code, or any other provision of the Charter or
15 Municipal Code.

16 * * * *

17 (j) No individual shall engage in sales solicitations for charitable purposes by
18 means of selling clothing, jewelry, or any other goods, products, services, or merchandise in
19 any area of the City unless that person obtains the appropriate permit, including but not limited
20 to a permit issued pursuant to Article 24 of the Police Code, ~~Article 2A of the Port Code~~ or Article
21 5.9 of the Public Works Code. This subsection (j) shall not apply to the sale of books, pamphlets,
22 buttons, bumper stickers, posters, or any other type of item that has no intrinsic value or
23 purpose other than to communicate a message.

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Section 5. Article 1 of the Business and Tax Regulations Code is hereby amended by revising Section 1.36, to read as follows:

SEC. 1.36. VENDING.

For Vending – by the *Port of San Francisco Department of Public Works*; subject to the approval of the Public Health Department for food Vending, if applicable (See *Article 2A of the Port Code Article 5.9 of the Public Works Code*).

Section 6. The Port Code is hereby amended by revising Sections 2.8 (in Article 2) and 6.3 (in Article 6), and by adding Section 2A.13 (to Article 2A), to read as follows:

SEC. 2.8. PEDDLING AND VENDING REGULATED ~~MERCHANDISE OR PRINTED MATERIAL.~~

(a) No person may vend ~~Vend~~ (as that term is defined in Section 2A.1 of the Port Code), or bring, or cause to be brought, for the purposes of Vending any food, beverage, goods, wares, or merchandise within the jurisdiction of the Commission without first having obtained a permit (in accordance with Article 2A of the Port Code), or a concession, license, or lease from the Executive Director.

(b) The Commission, Executive Director, or designee may adopt Rules and Regulations applicable to all vending ~~Vending~~ on property under the jurisdiction of the Commission, ~~in accordance with Section 2A.5 of the Port Code.~~

(c) Any Vending in violation of this Section 2.8, ~~Article 2A Port Code,~~ or any Rules and Regulations applicable to all vending ~~Vending~~ on property under the jurisdiction of the Commission, ~~in accordance with Section 2A.5 of the Port Code.~~

SEC. 6.3. PERMITS REQUIRED.

No person shall, without a permit, perform any of the following acts in any park:

1 * * * *

2 (C) Vend food or merchandise ~~Food or Merchandise~~ unless in accordance with Section
3 2.8 and any applicable permit or other authorization ~~Article 2A of the Port Code~~.

4 **SEC. 2A.13. SUNSET.**

5 This Article 2A shall expire by operation of law when the vending program authorized under
6 Article 5.9 of the Public Works Code has issued its first vendor permit. Upon expiration of this Article
7 2A, the City Attorney shall cause the Article to be removed from the Port Code. If this Article 2A
8 expires prior to the expiration of any Mobile Vendor Permits issued by the Port before December 14,
9 2021, those permits will remain in effect and permit Vending only on Port property for their original
10 term and expire no later than one year after initial issuance by the Port; upon expiration permittees
11 may seek permit renewal in accordance with Article 5.9 of the Public Works Code, notwithstanding the
12 expiration of Article 2A of the Port Code.

13
14 Section 7. Article 8 of the Health Code is hereby amended by deleting Section 452.2,
15 as follows.

16 **SEC. 452.2. REPORTING REQUIRED.**

17 The Department of Public Health, in consultation with the Port of San Francisco, shall report to
18 the Board of Supervisors regarding the implementation of Article 2A of the Port Code and any health
19 and safety enforcement actions related to Mobile Food Vendors: six months after the effective date of
20 Article 2A of the Port Code; annually for the first three years after the effective date of Article 2A of the
21 Port Code; and once every three years thereafter (see Port Code Section 2A.10 (Reporting Required)).

22
23
24 Section 8. Effective Date. This ordinance shall become effective 30 days after
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned, or the Mayor does not sign the ordinance within ten days after receiving
2 it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

3
4 Section 9. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
6 numbers, punctuation, charts, diagrams, or any other constituent part of the Business and Tax
7 Regulations, Health, Police, Port, and Public Works codes that are explicitly shown in this
8 legislation as additions, deletions, Board amendment additions, and Board amendment
9 deletions in accordance with the "Note" that appears under the official title of the ordinance.

10
11
12 APPROVED AS TO FORM:
13 DAVID CHIU City Attorney

14
15 By: /s/Christina Fletes-Romo
16 Christina Fletes-Romo
17 Deputy City Attorney
18 n:\legana\as2021\2200129\01571128.docx

LEGISLATIVE DIGEST

[Various Codes - Street Vendor Regulation]

Ordinance amending the Public Works Code to regulate vending, require permits for vending, and authorize permit fees and enforcement actions; amending provisions of the Business and Tax Regulations and Police Codes to conform with those amendments; amending the Port Code to merge its permit program with the Public Works permit program; repealing reporting provisions from the Health Code; and adopting findings under the California Environmental Quality Act.

Existing Law

Street vending in the City is largely unregulated. Public Works Code Article 5.8 (Sections 184.80 et seq.) establishes the Department of Public Works' regulatory program for mobile food facilities, but does not regulate stationary vendors or roaming vendors. Port Code Article 2A establishes a regulatory program for stationary and roaming vending in areas under the Port's jurisdiction.

Amendments to Current Law

The ordinance would create a new City-wide regulatory program for street and sidewalk vending that would require permits to vend merchandise, pre-packaged food, or both, authorize a permit fee, establish rules and regulations to govern the time, place, and manner of vending, ban vending at United Nations Plaza except during the farmers' market, and establish enforcement methods including administrative citations and impoundment. The ordinance amends the Port Code and includes a sunset provision to phase out the Port's regulatory vending program in order to merge the program with the Public Works permit program. The ordinance does not regulate vending on property under the jurisdiction of the Recreation and Parks Department, except for UN Plaza and Hallidie Plaza. The ordinance amends provisions of the Business and Tax Regulations and Police codes and repeals a reporting provision from the Health Code.

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