

File No. 240439

Committee Item No. 4

Board Item No. 16

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date June 10, 2024

Board of Supervisors Meeting

Date July 2, 2024

Cmte Board

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<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	Memorandum of Understanding (MOU)
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 - Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Form 700
<input type="checkbox"/>	<input type="checkbox"/>	Information/Vacancies (Boards/Commissions)
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

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Completed by: Victor Young Date June 6, 2024

Completed by: _____ Date _____

[Public Works Code - Vending Requirements and Restrictions]

Ordinance amending the Public Works Code to streamline the enforcement of vending requirements and restrictions, clarify vending permit application and compliance requirements, require certain vending permittees to register with the Tax Collector and pay related fees, prohibit stationary sidewalk vendors from vending in residential districts as defined in the Planning Code, limit permissible vending times, and streamline approval of vending regulations; and affirming the Planning Department's determination under the California Environmental Quality Act.

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 ~~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. Environmental Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 240439 and is incorporated herein by reference. The Board affirms this determination.

1 Section 2. General Findings.

2 (a) Since Public Works Code Article 5.9 (the "Vending Ordinance") took effect, the
3 Department of Public Works ("Department") has devoted significant resources to enforce
4 Article 5.9 to preserve the safety and usability of City sidewalks and property. During the
5 course of enforcement efforts, the Department has routinely encountered a large volume of
6 unpermitted Vendors occupying sidewalks, transit shelters, and BART property.

7 (b) As evidenced by police incident reports on file with the Department, the City
8 sidewalks and property on which Vending occurs are sometimes impacted by illegal activities,
9 such as assault, battery, drug sales and use, alcohol consumption, and theft. Overcrowded
10 sidewalks impede Department staff's ability to enforce the Vending Ordinance and police
11 officers' ability to respond to these safety threats effectively.

12 (c) The aforementioned conditions that occur contemporaneously with and in proximity
13 to Vending activities pose numerous objective health, safety, and welfare concerns,
14 threatening the health, safety, and wellbeing of Vendors, pedestrians, wheelchair users, and
15 City staff who are using City property. Such conditions have required significant law
16 enforcement and civilian staff resources to mitigate and address nuisance and criminal
17 activities that occur alongside Vending activities, diverting these City resources from other law
18 enforcement and Public Works functions.

19 (d) The aforementioned Vending, criminal, and nuisance activities have been
20 associated with and have exacerbated the severity of unsanitary sidewalk conditions resulting
21 from the accumulation of food waste, drug paraphernalia, Vendors' discarded boxes and
22 receptacles, and other miscellaneous debris, all in violation of the Vending Regulations that
23 have been approved by the City and the Good Neighbor Policies in Public Works Code
24 Section 5.9-9.

(e) This ordinance intends to implement improvements to Vendor permitting and Vendor permit enforcement in order to address objective health, safety, and welfare concerns associated with Vending. The ordinance would also enable the Department to update and amend its regulations more expeditiously to better address urgent conditions and concerns related to Vending on City property.

Section 3. Article 5.9 of the Public Works Code is hereby amended by revising Sections 5.9-2, 5.9-3, 5.9-4, 5.9-5, 5.9-6, 5.9-8, and 5.9-11, to read as follows:

SEC. 5.9-2. DEFINITIONS.

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

* * * *

Merchandise. Any item that is ~~not~~ neither Food, nor unpackaged food, nor food that is cooked or prepared onsite, and that is not an art or craft regulated under Article 24 (Regulating Street Artists) of the Police Code.

* * * *

Vend (and variations such as Vends, Vending). To sell, offer for sale, expose or display for sale, solicit offers to purchase or lease, or barter Food or Merchandise. Vending includes offering free samples of Food or Merchandise that are also for sale, ~~or~~ negotiating fees for Food or Merchandise, or soliciting customers to enter into commercial agreements.

* * * *

1 **SEC. 5.9-3. PERMIT REQUIRED; MANDATORY DISPLAY; PROOF OF PURCHASE.**

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

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

9 (c) Upon request by an Enforcement Official ~~and in accordance with Section 5.9-5(a)(5)~~, a
10 Vendor shall immediately provide proof of ownership or authorization to sell the Food and/or
11 Merchandise that the Vendor is Vending.

12
13 **SEC. 5.9-4. VENDOR PERMIT TYPE.**

14 (a) The Department shall issue Vending permits to applicants under Section 5.9-5.
15 Each Vendor permit must:

16 (1) Include a photograph of the Vendor ~~or any personal identifier meant~~ to prevent
17 the sale or transfer of the permit.

18 (2) Identify whether the permit authorizes the permittee to Vend Food, Vend
19 Merchandise, or Vend both Food and Merchandise, except as provided in subsection (b).

20 (b) Notwithstanding subsection (a), the Department may issue a time-limited Vendor
21 permit to a nonprofit corporation that is exempt from federal taxation under 26 U.S.C. Section
22 501(c)(3), as it may be amended, and which permit may apply to multiple Vendors as further
23 described in the permit.

1 **SEC. 5.9-5. PERMIT APPLICATION; FEE.**

2 (a) **Department Permit.** The Department shall establish a uniform application
3 process through which a Vendor may request, and upon approval receive, a Vendor permit.
4 The application process shall be easily accessible to individuals with limited business
5 experience and limited English language proficiency. The permit application shall require:

6 * * * *

7 (5) For ~~any new~~ Food and/or Merchandise to Vend, whether new or used, an
8 attestation by the Vendor that the Vendor will maintain proof of ownership or authorization to
9 sell the Food and/or Merchandise and will produce the documentation of same immediately
10 upon request. ~~If the Vendor does not have proof of ownership or authorization to sell the Food~~
11 ~~and/or Merchandise, the Vendor shall provide a written explanation for the lack of proof thereof.~~

12 (6) A certification by the Vendor that to the Vendor's knowledge and belief, the
13 information submitted for the permit application is true.

14 (7) Proof of Identity, as described in Administrative Code Section 95.2 and as it
15 may be amended, of the Vendor.

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

18 (9) The Vendor's California seller's permit number (California Department of Tax and
19 Fee Administration sales tax number), if applicable.

20 (109) Any other information deemed relevant by the Department.

21 * * * *

22
23 **SEC. 5.9-6. VENDING RESTRICTIONS AND REQUIREMENTS.**

24 (a) **Certified Farmers' Market or Swap Meet.** No person, without written approval of
25 the Director, may Vend within the immediate vicinity of a permitted Certified Farmers' Market

1 or a permitted Swap Meet during the operating hours of that Certified Farmers' Market or
2 Swap Meet.

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

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

19 (d) **Hallidie Plaza.** The Director, in consultation with the General Manager of the
20 Recreation and Park Department or the General Manager's designee, may approve a
21 Vending permit at Hallidie Plaza if the Director finds that the issuance of such a permit would
22 not objectively undermine public health, safety, or welfare.

23 (e) ***Residential Zones.*** Stationary Vendors may not operate in any RH (Residential, House)
24 districts as defined in the Planning Code.

1 (f) **Hours of Operation.** Each Vendor permit shall include permissible Vending hours, which
2 shall be consistent and not in conflict with any limitations on hours of operation imposed by federal,
3 state, and City laws, including but not limited to the Police Code and the Planning Code Zoning
4 Control Tables, on other businesses or uses on the streets on which the Vendor operates. Each Vendor
5 shall not Vend at times other than the hours authorized in the Vendor's permit.

6 (g) **Business Registration.** Each Vendor shall register with the Tax Collector pursuant to
7 Article 12 (Business Registration) of the Business and Tax Regulations Code, if applicable. Separate
8 fees may apply and be payable to the Tax Collector.

10 **SEC. 5.9-8. DELEGATION OF AUTHORITY FOR RULEMAKING.**

11 **(a) Rules and Regulations Authorized.** ~~Subject to the restrictions stated in subsections~~
12 ~~(b) and (c),~~ The Department, in consultation with the Office of Economic and Workforce
13 Development and the Human Rights Commission, may adopt Rules and Regulations related
14 to the administration and enforcement of this Article 5.9, in order to further the purposes of
15 this Article 5.9, and to promote public health, safety, or welfare. The Rules and Regulations
16 may include but are not necessarily limited to:

17 (1) Standards for approving permits.

18 (2) Additional requirements regulating the time, place, and manner of Vending,
19 including prohibiting Vending in certain locations, if the Rules and Regulations are directly
20 related to objective health, safety, or welfare concerns.

21 (3) Notice requirements of new Rules and Regulations regarding the time,
22 place, and manner of Vending, including locations where Vending is prohibited.

23 (4) The process for granting fee waivers.

24 (5) Requirements to maintain sanitary conditions.

1 (6) Requirements necessary to ensure compliance with the Americans with
2 Disabilities Act of 1990 (Public Law 101-336), as it may be amended, and other disability
3 access standards.

4 (7) Requirements necessary to ensure the public's use and enjoyment of
5 natural resources and recreational opportunities.

6 (8) Requirements necessary to prevent an undue concentration of commercial
7 activity that unreasonably interferes with the scenic and natural character of a park.

8 (9) The process for selecting organizations to accept donated goods pursuant
9 to Section 5.9-11(f)(3).

10 (10) Any other Rules and Regulations in order to further the purposes of this
11 Article 5.9 and promote public health, safety, or welfare.

12 ~~(b) **Disapproval by the Board of Supervisors.** Any Rules and Regulations adopted under the~~
13 ~~authority of subsection (a) shall be subject to disapproval of the Board of Supervisors by ordinance~~
14 ~~until August 31, 2022. The Department shall provide written notice to the Clerk of the Board of~~
15 ~~Supervisors of its adoption of any Rule or Regulation under subsection (a), along with a copy of said~~
16 ~~Rule or Regulation. If a Member of the Board of Supervisors does not introduce an ordinance to~~
17 ~~disapprove the Rule or Regulation within 30 days of the date of delivery of said notice to the Clerk of~~
18 ~~the Board of Supervisors, or if such an ordinance is introduced within the 30-day period but the~~
19 ~~ordinance is not passed on second reading by the Board of Supervisors within 90 days of the date of the~~
20 ~~Department's delivery of notice to the Clerk of the Board of Supervisors, or, if so passed by the Board~~
21 ~~is not subsequently enacted by the City or does not become law, the Rule or Regulation shall go into~~
22 ~~effect.~~

23 ~~(c) **Approval by the Public Works Commission.** Starting on September 1, 2022, any Rules~~
24 ~~and Regulations adopted under the authority of subsection (a) shall be subject to approval of the Public~~
25 ~~Works Commission.~~

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

13
14 **SEC. 5.9-11. ENFORCEMENT.**

15 (a) ~~Operative Date. The enforcement provisions outlined in this Section 5.9-11 in subsections~~
16 ~~(b)-(k) shall become operative eight weeks after the effective date of the ordinance in Board File No.~~
17 ~~211292 establishing this Article 5.9, in order to allow the Department to conduct pre-enforcement~~
18 ~~extensive education and outreach pursuant to Section 5.9-10.~~

19 (b) **Nuisance Declaration.** Any violation of this Article 5.9, or of any applicable Rules
20 and Regulations, constitutes a public nuisance.

21 (be) **Notice of Violation.** Any Enforcement Official may issue a Notice of Violation for
22 any violation of this Article 5.9, or of the Rules and Regulations that interpret and implement
23 this Article, and as described in subsection (ce) below, that occurs on a public right-of-way (as
24 that term is defined in Public Works Code Section 2.4.4) or any other street, sidewalk, alley,
25 walkway, or pedestrian path available to the public. The Notice of Violation shall include: (1)

1 information identifying the Offender, (2) details of the violation, (3) the name or identifying
2 number of the Enforcement Official, (4) a general description of administrative fines, and
3 payment method and options, including the ability-to-pay determination, (5) a general
4 description of the appeals process, (6) information about the requirements of this Article 5.9
5 and any applicable Rules and Regulations that interpret and implement this Article, (7)
6 information about who to contact for assistance related to this Article 5.9, and (8) information
7 about workforce development opportunities and job placement programs.

8 ~~(c)~~ *Written Warnings.*

9 ~~—— (1) The Department shall use the information included in the Notice of Violation to~~
10 ~~issue a written warning for any violation of this Article 5.9, or the Rules and Regulations that interpret~~
11 ~~and implement this Article 5.9, within 15 calendar days of issuing the Notice of Violation. The written~~
12 ~~warning shall inform the Vendor of a reasonable time, identified by the Department, to correct the~~
13 ~~issue or if the Vendor fails to correct the issue, the Vendor may be subject to an Administrative~~
14 ~~Citation. If a Vendor is found Vending Food and/or Merchandise in a package that is different from the~~
15 ~~description listed in the Vendor's permit application pursuant to Section 5.9-5, the written warning~~
16 ~~shall inform the Vendor of a reasonable time, identified by the Department, to update the description of~~
17 ~~the Food and/or Merchandise in the Vendor's permit application, or the Vendor may be subject to an~~
18 ~~Administrative Citation for failing to update the description.~~

19 ~~(2) If a Vendor fails to correct any of the issues for which they received a written~~
20 ~~warning within the reasonable time identified by the Department, all additional violations of this~~
21 ~~Article 5.9, or of any applicable Rules and Regulations that interpret and implement this Article 5.9,~~
22 ~~shall be subject to an Administrative Citation.~~

23 ~~(e)~~ **Administrative Citation.** The Department will use the information included in the
24 Notice of Violation to issue an Administrative Citation for any violation of this Article 5.9, or the
25

Rules and Regulations that interpret and implement this Article, as described below, within 15 calendar days of issuing the Notice of Violation:

(1) Vending that violates a requirement in this Article 5.9 or in the Rules and Regulations that interpret and implement this Article, other than failure to possess a valid license or permit shall be subject to the following:

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

(B) An administrative fine equal to \$200 for a second violation within 12 ~~twelve~~ months of the first violation.

(C) An administrative fine equal to \$500 for a third violation, and each subsequent violation, within 12 ~~twelve~~ months of the first violation.

(D) In addition to any other authorized enforcement activity, the Director may revoke or suspend a Vendor's ~~license and/or~~ permit for the remainder of its term upon a fourth ~~or subsequent~~ violation within 12 ~~twelve~~ months of the first violation.

(2) Vending without a valid ~~license or~~ permit shall be subject to the following:

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

(B) An administrative fine equal to \$500 for a second violation within 12 ~~twelve~~ months of the first violation.

(C) An administrative fine equal to \$1,000 for a third violation, and each subsequent violation, within 12 ~~twelve~~ months of the first violation.

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

1 (3) Failure to pay an Administrative Citation described in this subsection (c) shall not be punishable as an infraction or misdemeanor; further, additional fines, fees,
2 assessments, or any other financial conditions beyond those authorized in this subsection (c)
3 may not be assessed.
4

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

15 (5) To the extent permitted by State law, the amounts of the administrative fines
16 identified in subsections (A) through (C) of subsections (c)(1) and (c)(2) shall automatically
17 increase or decrease to the maximum amount authorized under California Government Code
18 Section 51039, as it may be amended. If Section 51039 is repealed and not replaced with a
19 similar limitation on administrative fines, then the Director, in consultation with the Controller,
20 may adjust the administrative fine amounts in this Section 5.9-11 each year, without further
21 action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index.

22 (6) Within 30 days of issuance, the Vendor shall pay the Administrative Citation
23 unless the Vendor files a written appeal with the Director. The grounds of appeal are limited
24 to error or abuse of discretion in the issuance of the Administrative Citation. The Director may
25 make an ability-to-pay determination pursuant to subsection (c)(4), but inability to pay shall

1 not be grounds for rescinding the Administrative Citation or reducing the amount required to
2 satisfy the fine to an amount less than the amount specified in subsection (~~c~~)(4). The
3 Director shall consider any claims or defenses by the appellant, and shall issue and mail a
4 written decision on the appeal within a reasonable time of receipt of the written appeal. Within
5 20 days of the Director's decision upholding a fine in whole or in part, the Vendor shall pay the
6 Administrative Citation. The Vendor may seek judicial review of an Administrative Citation
7 pursuant to subsection (c)(1) in San Francisco Superior Court pursuant to Government Code
8 Section 53069.4.

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

12 (8) Collection of Fines. The failure of any person to pay a fine assessed by
13 Administrative Citation within the required time constitutes a debt to the City. Simple interest
14 at 10% per year shall accrue on unpaid amounts.

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

16 (1) Any Enforcement Official may order a Vendor to promptly cease Vending
17 when, in the judgment of the Enforcement Official, (A) the Vendor constitutes a safety hazard,
18 including but not limited to impeding the safe use of a public right-of-way by pedestrians or
19 persons with disabilities, or (B) when the presence of an emergency so requires, or (C) if the
20 Vendor is unpermitted.

21 (2) (A) After the Enforcement Official orders an unpermitted Vendor to cease
22 Vending, the Vendor must discontinue any Vending and remove all Food, Merchandise, and
23 any other Vending paraphernalia from property within the City's jurisdiction. A failure to
24 promptly obey any such order from an Enforcement Official is a violation of this Article 5.9.
25

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

8 (3) (A) Verbal Warning Followed By Removal of Food, Merchandise, and
9 Vending Paraphernalia. If a Vendor fails, within 10 minutes-a reasonable time, to remove Food,
10 or Merchandise, or any other Vending paraphernalia from the location ~~subject to the following~~
11 ~~an~~ order to cease Vending, or fails to follow any other orders the Enforcement Official may
12 issue to mitigate safety hazards, the Enforcement Official or the Department may remove any
13 or all of the items. Prior to removal by the Enforcement Official or the Department, the
14 Enforcement Official shall ~~provide warn~~ the Vendor a verbal warning of the impending removal
15 and impoundment, and shall urge the Vendor to make every effort to remove the items, or
16 cause their removal, ~~and shall urge the Vendor to make every effort to remove the items, or~~
17 ~~cause their removal, and shall urge the Vendor to make every effort to remove the items, or cause~~
18 ~~their removal.~~ The Department shall document in its records the date and time the verbal
19 warning was provided.

20 (B) Removal of Food, Merchandise, or Vending Paraphernalia Within 120 Days
21 of Verbal Warning. Following a verbal warning from the Enforcement Official at any time within
22 a 120-day period, if a Vendor fails to follow an order to cease Vending, or fails to follow any
23 other orders the Enforcement Official may issue to mitigate safety hazards, the Enforcement
24 Official or the Department may remove any or all Food, Merchandise, or any other Vending
25 paraphernalia from the location subject to the order to cease Vending.

1 (4) Where the Department actually removes any items, the Enforcement Official
2 shall issue an Administrative Citation to the Vendor. The Vendor shall pay the actual costs of
3 removal and storage of any items impounded, and of disposal of any items the storage of
4 which may cause public health, safety, or infestation issues. The Vendor may contest the
5 liability for these costs by timely appealing the Administrative Citation. However, these actual
6 costs to the City are not subject to reduction based on the ability to pay; actual costs are a
7 debt to the City that may be collected in the same manner as provided in subsection (~~ce~~)(8).
8 Vendor items that have been removed and stored may be recovered by the Vendor within 90
9 days from the date of removal and upon payment of a sum equal to the costs of removal, plus
10 any reasonable transport and storage costs, as determined by the Department, and any costs
11 incurred by the Department in disposing of any items. If the Vendor filed a written appeal
12 pursuant to subsection (~~ce~~)(6) and the appeal is not resolved within 90 days, the Department
13 shall continue to store Vendor's items until the appeal is resolved in order to allow Vendor to
14 recover items. After 90 days, or as soon as the Vendor's appeal is resolved if longer than 90
15 days, the Department shall donate non-Food items to organizations providing services to
16 people who are unhoused, as appropriate. Prior to making any donations, the Department
17 shall adopt regulations governing the process for selecting organizations to accept these
18 donated goods.

19 (~~ge~~) **Other Violations.** Any violation of this Article 5.9, or of the Rules and Regulations
20 that interpret and implement this Article, may be subject to one or more of the following:

21 (1) An administrative fine as described in subsection (~~ce~~).

22 (2) Civil Action.

23 (A) The Department may refer violations to the City Attorney to maintain
24 an action for injunction to restrain to cause the correction or abatement of the violation of this
25

1 Article 5.9, and for recovery of any City department's enforcement and abatement costs
2 (including but not limited to costs for removal, storage, impoundment, and disposal).

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

5
6 Section 4. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor's veto of the ordinance.

10
11 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
15 additions, and Board amendment deletions in accordance with the "Note" that appears under
16 the official title of the ordinance.

17
18
19 APPROVED AS TO FORM:
20 DAVID CHIU, City Attorney

21 By: /s/ Christopher T. Tom
22 CHRISTOPHER T. TOM
23 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(6/25/2024, Amended in Board)

[Public Works Code - Vending Requirements and Restrictions]

Ordinance amending the Public Works Code to streamline the enforcement of vending requirements and restrictions, clarify vending permit application and compliance requirements, require certain vending permittees to register with the Tax Collector and pay related fees, prohibit stationary sidewalk vendors from vending in residential districts as defined in the Planning Code, limit permissible vending times, and streamline approval of vending regulations; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Currently, Article 5.9 of the Public Works Code authorizes the Department of Public Works to regulate "Vending" on City property, including sidewalks. To Vend means "[t]o sell, offer for sale, expose or display for sale, solicit offers to purchase, or barter Food or Merchandise" and Vending "includes offering free samples of Food or Merchandise that are also for sale, or negotiating fees for Food or Merchandise." (Public Works Code Sec. 5.9-2.)

Amendments to Current Law

This ordinance would amend the following sections of Public Works Code Article 5.9 to implement improvements to Vendor permitting and permit enforcement, as described below.

1. Section 5.9-2 (Definitions).
 - a. Clarifies that "Merchandise" does not include "Food", unpackaged food, or food that is cooked or prepared onsite.
 - b. Clarifies that "Vending" includes soliciting offers to lease and "soliciting customers to enter into commercial agreements."
2. Section 5.9-3 (Permit Required; Mandatory Display; Proof of Purchase). Requires that Vendors "immediately provide proof of ownership" or authorization to sell Food and/or Merchandise.
3. Section 5.9-4 (Vendor Permit Type). Requires a Vendor permit to include the Vendor's photograph to prevent the sale or transfer of the permit.
4. Section 5.9-5 (Permit Application; Fee).
 - a. Clarifies that Vendors Vending of any Food and/or Merchandise, "whether new or used," must maintain proof of ownership or authorization to sell the Food and/or Merchandise and must produce such documentation "immediately upon request."

- b. Requires Vendor permit applications to include, as may be applicable, the Vendor's California seller's permit number (California Department of Tax and Fee Administration sales tax number).
- 5. Section 5.9-6 (Vending Restrictions "and Requirements," as amended).
 - a. Prohibits Stationary Vendors from operating in any RH (Residential, House) districts as defined in the San Francisco Planning Code.
 - b. Requires Vendor permits to include permissible Vending hours, which "shall be consistent and not in conflict with" any limitations on hours of operation imposed by federal, state, and City laws on other businesses or uses on the streets on which the Vendor operates.
 - c. Requires Vendors engaged in Vending that is subject to the Article 12 of the Business and Tax Regulations Code to register with the Tax Collector.
- 6. Section 5.9-8 (Delegation of Authority for Rulemaking). Authorizes the Department to adopt and amend Vending regulations without the Public Works Commission's approval.
- 7. Section 5.9-11 (Enforcement).
 - a. Removes the requirement that the Department provide a written warning prior to issuing a Notice of Violation.
 - b. Clarifies that when an authorized Enforcement Official orders a Vendor to cease vending due to a safety hazard or an emergency or the Vendor's lack of a Vendor permit, the Vendor would have ten minutes to remove all the Vendor's Food, Merchandise, or any other Vending paraphernalia before they would be subject to seizure by the City.
 - c. Requires the Enforcement Official to provide a Vendor who has been ordered to cease vending only one verbal warning during a 120-day period. At any time within the 120-day period following such verbal warning, if the Vendor fails to follow an order to cease Vending, or fails to follow any other orders the Enforcement Official may issue to mitigate safety hazards, the Enforcement Official or the Department would be authorized to remove any or all Food, Merchandise, or any other Vending paraphernalia from the location subject to the order to cease Vending.
 - d. Deletes the following requirement from Section 5.9-11(d)(3): ""and shall urge the Vendor to make every effort to remove the items, or cause their removal."

Background Information

This ordinance is intended to implement improvements to Vendor permitting and Vendor permit enforcement in order to address objective health, safety, and welfare concerns associated with Vending. In addition, the ordinance would enable the Department to update and amend its regulations more expeditiously to better address urgent conditions and concerns related to Vending on City property.

On April 15, 2024, the Rules Committee approved an amendment to the proposed ordinance to leave unchanged the following provision of Section 5.9-11(d)(3), which had been and is no

longer proposed to be deleted: “and shall urge the Vendor to make every effort to remove the items, or cause their removal.”

The proposed amendments submitted on June 3, 2024 include the amendments to Section 5.9-11(d)(3) described in paragraphs 7(c) and (d) above.

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

Date: June 5, 2024
To: Planning Department/Planning Commission
From: Victor Young, Assistant Clerk, Rules Committee
Subject: Board of Supervisors Legislation Referral - File No. 240439 Version 2
Public Works Code - Vending Requirements and Restrictions

- ☒ California Environmental Quality Act (CEQA) Determination
(*California Public Resources Code, Sections 21000 et seq.*)
- ☒ Ordinance / Resolution Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.
- ☐ Ballot Measure 6/6/2024 Joy Navarrete
- ☐ Amendment to the Planning Code, including the following Findings:
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
- ☐ General Plan ☐ Planning Code, Section 101.1 ☐ Planning Code, Section 302
- ☐ Amendment to the Administrative Code, involving Land Use/Planning
(*Board Rule 3.23: 30 days for possible Planning Department review*)
- ☐ General Plan Referral for Non-Planning Code Amendments
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
- ☐ Historic Preservation Commission
- ☐ Landmark (*Planning Code, Section 1004.3*)
- ☐ Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
- ☐ Mills Act Contract (*Government Code, Section 50280*)
- ☐ Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to John Carroll at john.carroll@sfgov.org.