

1 [Public Works, Police Codes - Sidewalk Flower Stand Permits]

2

3 **Ordinance amending the Public Works Code to enhance and modify the sidewalk**  
4 **flower stand permit program by, among other things, 1) updating and clarifying the**  
5 **applicable fees, 2) authorizing Public Works to consult with the Office of Small**  
6 **Business to identify and evaluate eligible permit applicants, 3) updating permit**  
7 **application requirements, 4) supplementing permit conditions and restrictions, 5)**  
8 **establishing minimum operating hours of 35 hours per week, 6) requiring permittees to**  
9 **be present at sidewalk flower stands for at least 50% of the applicable hours of**  
10 **operation and to dedicate a minimum of 75% of the sidewalk flower stand for the sale**  
11 **or storage of certain eligible flowers and plants, 7) prohibiting the leasing or sub-**  
12 **leasing of sidewalk flower stands, and 8) prohibiting the sale, assignment, inheritance,**  
13 **or transfer of flower stand permits; amending the Police Code to authorize Public**  
14 **Works to impose, assess, and collect administrative penalties; and affirming the**  
15 **Planning Department's determination under the California Environmental Quality Act.**

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

20

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

22

23 Section 1. Environmental Findings.

24 The Planning Department has determined that the actions contemplated in this  
25 ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
2 Supervisors in File No. \_\_\_\_ and is incorporated herein by reference. The Board affirms this  
3 determination.

4  
5 Section 2. General Background and Findings.

6 (a) Once home to dozens of sidewalk flower stands, San Francisco now has four  
7 active sidewalk flower stands while twelve sidewalk flower stand locations within the nine  
8 “Street Flower Market” areas identified in Article 5 of the Public Works Code remain inactive  
9 and available for operation.

10 (b) Sidewalk flower stands provide unique retail opportunities for small businesses to  
11 bring commercial vibrancy and seasonal cheer to key downtown locations for the enjoyment  
12 of workers, residents, and visitors alike. In addition, active and operational sidewalk flower  
13 stands will help revitalize downtown.

14 (c) This ordinance makes amendments to the sidewalk flower stand permit program  
15 that will help activate sidewalk flower stand locations that currently sit empty and appear to be  
16 abandoned. This ordinance amends the Public Works Code to streamline, simplify, and  
17 strengthen the process of activating sidewalk flower stands, and authorizes the Department of  
18 Public Works to issue sidewalk flower stand permits and to collaborate with the Office of Small  
19 Business to identify and evaluate qualified and eligible sidewalk flower stand permittees to  
20 operate flower stands. In addition, the amendments clarify and expand the categories and  
21 types of flowers, plants, and accessories that may be sold at a sidewalk flower stand.

22  
23 Section 3. The Public Works Code is hereby amended by revising Article 2.1, Section  
24 2.1.1 and Article 5, Sections 155, 156, 157, 159, 161, 162, and 163, and deleting Section 160,  
25 to read as follows:

1           **SEC. 2.1.1. FEES.**

2           Notwithstanding the permit fee provisions listed elsewhere in this Code, the permit fee  
3 and assessment schedule for the permit categories and uses specifically listed below shall be:

4           (a) ~~Sidewalk Street~~ Flower ~~Stand~~ Market Permit pursuant to Article 5 (Sections 155 et  
5 seq.): \$1,299 permit application fee plus an annual public right-of-way occupancy assessment fee per  
6 square foot of occupied space (initial fees); \$1,299 permit renewal fee plus an annual public right-of-  
7 way occupancy assessment fee per square foot of occupied space (annual renewal fees) ~~\$103.36~~  
8 ~~administrative fee and inspection fee of \$6.75 per square foot of occupancy;~~

9           \* \* \* \*

10  
11           **SEC. 155. DESIGNATION OF LOCATIONS—~~PROVISO.~~** Sidewalk flower ~~vending~~  
12 stands shall be located within the following designated street flower market areas upon the  
13 sidewalks of the City and County of San Francisco ~~at the curb or building line.~~

14           \* \* \* \*

15           **The Market Street and 5th ~~Emporium~~ Street Flower Market**

16           On the south sidewalk of Market Street facing the location of 835 Market Street.

17           \* \* \* \*

18  
19           **SEC. 156. AUTHORITY TO ISSUE PERMITS.**

20           The Director of Public Works is hereby authorized and empowered to issue permits for  
21 the maintenance of sidewalk flower ~~vending~~ stands at the locations specified in Section  
22 155 of this Article ~~5, subject to the proviso contained in said Section 155.~~ In considering the  
23 issuance of sidewalk flower ~~vending~~ stand permits and in prescribing the location of such  
24 stands within the areas set forth in Section 155 ~~of this Article,~~ the Director of Public Works  
25 shall give due regard to the conveniences and necessities of the owners, occupants, or

1 tenants of offices, stores, or shops in the vicinity and nearby residents. In consultation with the  
2 Office of Small Business, the Department of Public Works (the "Department") shall also consider the  
3 unique needs and qualifications of small businesses in San Francisco.

4 **SEC. 157. APPLICATION FOR PERMIT.**

5 Each application for a sidewalk flower ~~vending~~ stand permit shall include all information  
6 that the Department requires including but not limited to the applicant's ~~state~~ the name, phone number,  
7 email address, mailing address, physical address, and Proof of Identity, as defined in Administrative  
8 Code Section 95.2, as may be amended from time to time of the applicant therefor as well as the names  
9 of the individuals to be employed by or engaged with the applicant in displaying or selling flowers at  
10 said flower vending stand.

11 **SEC. 159. PERMIT—PERMIT FEE.**

12 No person or business, firm or corporation shall operate, maintain, or conduct business in any  
13 sidewalk flower ~~vending~~ stand in the City and County of San Francisco without first obtaining a  
14 permit to so do, along with any other required permits and paying the fees for said permit in  
15 accordance with the provisions of this Article. The fee for any such permit shall be \$100 per quarter  
16 year, commencing on the first day of July, 1981, and in addition to said quarterly fee herein provided  
17 for, each permittee shall pay a quarterly fee of \$30 for each employee employed in and about said  
18 sidewalk flower vending stands. When any application for a permit for a sidewalk flower stand-  
19 vending permit shall be granted by the Director of Public Works, the same permit shall be  
20 issued delivered to the permittee only upon the payment of the initial fees set forth in Section 2.1.1 of  
21 this Code. first quarter's permit fee due thereon, and the payment of the same shall be endorsed on  
22 said permit, and said P permittee shall thereafter pay annually quarterly, in advance, the renewal  
23 permit fees set forth in Section 2.1.1 herein provided for, and on the failure to so do, said permit  
24 may be revoked by the Director of Public Works.

1           **SEC. 160. [RESERVED] NO OTHER FEE OR PEDDLER'S LICENSE.**

2           *The permit fees provided for in Section 159 of this Article shall be the only fees charged for the*  
3 *privilege of maintaining said sidewalk flower vending stands or for displaying or selling flowers*  
4 *thereat. No peddler's license shall be required for such permittees or for any other person employed in*  
5 *and about the conduct of said sidewalk flower vending stands.*

6           **SEC. 161. PERMIT CONDITIONS AND RESTRICTIONS.**

7           The issuance of permits and licenses and the maintenance of sidewalk flower ~~vending~~  
8 stands by the persons granted permits hereunder shall be subject to and comply with all of the  
9 following conditions and restrictions:

10           (a) No permanent stands of any kind shall be erected on the sidewalks of said  
11 locations; the permittee of each sidewalk flower stand shall be solely responsible for the costs of  
12 installing, repairing, modifying, and removing the permittee's sidewalk flower stand. The permittee  
13 shall be billed and shall pay for any costs incurred by the City to remove the permittee's sidewalk  
14 flower stand.

15           (b) The design and construction of all sidewalk flower ~~vending~~ stands placed at the  
16 locations designated in Section 155 of this Article 5 and the maintenance of said stands shall  
17 be subject to the approval of the Director of Public Works; provided, that no such flower-  
18 ~~vending~~ stand shall exceed the following dimensions, ~~to-wit:~~ 10 feet in length and three feet in  
19 width, and any person, ~~firm~~ or business corporation having a permit to maintain and operate a  
20 sidewalk flower ~~vending~~ stand as provided in Sections 155 to 162 of this Article may maintain  
21 and operate a stand ~~not~~ exceeding 10 feet in length and three feet in width, and provided that no  
22 part of the permittee's flower vender's display or activities may take place in outside of an area  
23 that exceeds five feet in width and 20 feet in length. ~~;~~

24           (c) No more than one sidewalk flower ~~vending~~ stand shall be granted a permit to  
25 operate at any one of the locations designated in Section 155. ~~;~~

1 (d) No more than two persons shall at any given time be engaged or employed in  
2 displaying or selling flowers at any stand. The permittee shall be present at the sidewalk flower  
3 stand for at least 50%; provided, that for a substantial portion of time during the sidewalk flower  
4 stand's hours of operation of any stand, one of said persons engaged in displaying or selling flowers  
5 thereat shall be the person to whom the permit to operate said stand is issued; provided, however, that  
6 if the permit is issued to a firm or corporation, one of said persons engaged in displaying or selling  
7 flowers for a substantial portion of the time said stand is operated shall be an officer or partner of said  
8 firm or corporation.;

9 (e) Measured by the percentage of the footprint of the sidewalk flower stand that is occupied by  
10 the specified merchandise or the vessels containing such merchandise, a minimum of 75% of the square  
11 footage of the footprint of each sidewalk flower stand shall be dedicated to the storage or sale of ~~Only~~  
12 cut flowers, floral arrangements, evergreens, potted flowers or plants, shrubs, and wearable flowers  
13 (together "Eligible Flowers and Plants"), and a maximum of 25% of the square footage of the footprint  
14 of each sidewalk flower stand shall be dedicated to the storage or sale of accessories related to Eligible  
15 Flowers and Plants. ~~corsages~~ Only Eligible Flowers and Plants and related accessories shall be  
16 displayed or sold at any stand, and no display, sale, or orders for the sale ~~and/or~~ delivery of  
17 Eligible Flowers and Plants ~~floral arrangements, potted plants, or shrubs~~ shall be made, taken,  
18 received or solicited, at any stand, or by the permittees, owners, or operators thereof.;

19 (f) No rubbish, ~~or~~ cuttings, or debris resulting from the operation of the sidewalk flower stand  
20 shall be deposited in any public waste container.;

21 (g) Each sidewalk flower stand shall operate for a minimum of 35 hours per week. No  
22 sidewalk flower stand shall be operated between the hours of 9:00 p.m. and 7:00 a.m., and the  
23 sidewalk and street surrounding each stand shall be kept free of rubbish, cuttings, or debris  
24 resulting from the operation of the stand.;

1 (h) ~~No permit shall be issued to any person unless he or she has been a resident of the City and~~  
2 ~~County of San Francisco for a period of one year prior to his or her application for a permit~~  
3 ~~hereunder;~~

4 (i) ~~No owner, landlord, lessee, or occupant of any premises in the block occupied by a~~  
5 ~~sidewalk flower-vending stand as provided for herein, and no permittee, shall receive rent or any~~  
6 ~~remuneration directly or indirectly for the space occupied by such sidewalk flower-vending~~  
7 ~~stand or its operation;~~

8 (i) No individual shall be issued a permit for more than one sidewalk flower stand. Each  
9 permittee shall be prohibited from leasing or sub-leasing any sidewalk flower stand.

10 (j) Each person operating a sidewalk flower-vending stand under a permit as herein  
11 provided for, shall at all times carry and maintain at the permittee's own cost and expense a  
12 policy of liability insurance that is satisfactory to the City's Risk Manager~~in the minimum amount of~~  
13 ~~\$500,000 single limit applying to bodily injuries, personal injuries and property damage.~~ Said policy  
14 shall directly protect the City and County of San Francisco, including by designating its officers,  
15 ~~and~~ employees, and agents as named insureds, and shall provide that the insurance will  
16 operate as primary insurance and no other insurance effected by the City will be called on to  
17 contribute to a loss covered by said policy. ~~Permittee~~Said policy shall provide 30 days' notice  
18 of cancellation or material change to the Director of Public Works ~~of the City and County of San~~  
19 ~~Francisco.~~ Said policy shall be approved in writing by the Director of Public Works ~~and the City~~  
20 ~~Attorney of the City and County of San Francisco.~~ A copy of the policy and the certificate shall be  
21 filed with the Director of Public Works;

22 (k) Within 48 hours of the removal of a sidewalk flower stand, the permittee shall restore the  
23 sidewalk to a condition acceptable to the Director of Public Works. The permittee shall be billed and  
24 shall pay for any costs incurred by the City to remove the permittee's sidewalk flower stand.

1            ~~(l) In addition, T~~he permittee shall agree to hold harmless, defend, and indemnify the  
2 City and County of San Francisco, including, without limitation, each of its commissions,  
3 departments, its officers, agents, and employees from and against all losses, liabilities, expenses,  
4 actions, claims, demands, injuries, any damages, fines, penalties, suits, costs, and/or judgments,  
5 including, without limitation, attorneys' fees and costs (collectively, "Claims") ~~or injury~~ caused by  
6 reason of the placement, ~~or~~ maintenance, repair, operation, and/or removal of the sidewalk  
7 ~~flower-vending stand on the sidewalk~~, and the permittee shall be solely liable for any  
8 Claims ~~damage or loss, claims, injury and liability of every kind, nature and description directly or~~  
9 ~~indirectly arising from said activity~~ caused by reason of the installation, maintenance, repair,  
10 operation, and/or removal of the sidewalk flower stand and the permittee shall be solely liable for any  
11 Claims occasioned by any act or neglect in respect to the installation, maintenance, repair, operation,  
12 and/or removal of the sidewalk flower stand. Approval of insurance shall in no way relieve the  
13 ~~permittee operator~~ from liability under this hold harmless ~~hold harmless~~ clause.

14            ~~(mk)~~ There shall be no liability on the City or upon any of its officers, agents, or  
15 employees for any damage sustained by the permittee, employee, owner, or operator of any  
16 sidewalk ~~flower-vending~~ stand from any cause whatsoever, no matter whether said damage be  
17 caused by an officer, agent, or employee of the City or by any other person;

18            ~~(nl)~~ No flower stand permit shall be sold, assigned, inherited, or otherwise transferred. An  
19 assignment or sale of a flower stand permit, without the approval of the Board of Supervisors, is  
20 prohibited; provided, however, that in the event of the death of a permittee, his or her permit shall be  
21 considered to be assigned to a living member of the deceased permittee's immediate family. In the  
22 event that a sidewalk flower stand location ceases to have a permittee, Public Works may elect to issue  
23 a permit to an eligible applicant in consultation with the Office of Small Business. Provided further,  
24 however, that such living member of a deceased permittee's immediate family must thereafter  
25 personally operate the flower-vending stand within six months from the date of the distribution of the

1 ~~proceeds of the deceased permittee's estate or, with the approval of the Board of Supervisors, sell the~~  
2 ~~permit within said six-month period.~~

3 ~~For the purposes of this Subparagraph (l), the term "immediate family" shall be limited to the~~  
4 ~~children, grandchildren, spouse, co-habitant, parent, brother, sister, or child of a deceased brother or~~  
5 ~~sister of a deceased permittee.~~

6 ~~An individual shall be considered a "co-habitant" if he or she resided with the permittee, shared~~  
7 ~~the common necessities of life with the permittee, was not married to or related by marriage to the~~  
8 ~~permittee, was the permittee's sole co-habitant, and is over 18 years of age.~~

9 ~~An individual claiming a right to a permit as co-habitant under this Subparagraph (l) shall have~~  
10 ~~resided with the permittee, and been a resident of the City and County of San Francisco, for a period of~~  
11 ~~one year prior to the assignment or sale of said permit.~~

12 **SEC. 162. SUSPENSION, MODIFICATION, OR REVOCATION OF PERMIT; APPEAL**  
13 **OF PERMITTING DECISIONS.**

14 ~~(a) The permitteeoperator of any sidewalk flower ~~vending~~ stand, licensed hereunder, who~~  
15 ~~shall violate any of the restrictions and conditions set forth in Section 161 of this Article 5, or~~  
16 ~~any rule or regulation of the Director of ~~the Department of~~ Public Works adopted pursuant to~~  
17 ~~pursuance of the provisions of Section 158 of this Article, shall be subject to the suspension or~~  
18 ~~revocation of the permit by said Director.~~

19 ~~(b) The Director is authorized to initiate proceedings to suspend or revoke the permit for any~~  
20 ~~reason including but not limited to the permittee's failure to comply with any of the permit's conditions~~  
21 ~~of approval; the sidewalk flower stand poses a threat to public safety, health, or welfare; or all or a~~  
22 ~~portion of the public right-of-way on which the sidewalk flower stand is located, or a portion of public~~  
23 ~~right-of-way near a sidewalk flower stand, is required for a different public purpose.~~

24 ~~(c) To initiate revocation proceedings, or to suspend or modify a permit, the Director shall~~  
25 ~~provide the permittee with written notification, to the permittee's address on file with the Department,~~

1 of the time and date of a public hearing to consider the grounds stated in the written notification for  
2 revoking, suspending, or modifying the permit. Following the public hearing, the Director may issue  
3 an order revoking, suspending, or modifying the permit. If the failure to comply with the conditions of  
4 approval poses an imminent threat to public safety, health, or welfare, the Director shall immediately  
5 suspend the permit pending a final decision to revoke, suspend, or modify the sidewalk flower stand  
6 permit. The Director's modification, revocation, or suspension of a permit may be appealed under  
7 subsection (c). Following the final decision of the Director or the Board of Supervisors, if applicable,  
8 to revoke the permit, the former permittee shall remove the sidewalk flower stand and restore the public  
9 right-of-way to a condition satisfactory to the Director. Any restoration shall be performed at the sole  
10 and absolute expense of the former permittee.

11 (d) Within 15 days following the Director's approval, denial, or revocation of a permit, any  
12 person may file a notice of appeal with the Clerk of the Board of Supervisors. Pending a decision by  
13 the Board of Supervisors, the Director's decision to approve, deny, modify, or revoke a permit shall be  
14 suspended. The Board of Supervisors may affirm, reverse, or modify any permit decision made by the  
15 Director under the provisions of this Article 5. The decision by the Board of Supervisors is final.

16  
17 **SEC. 163. VIOLATIONS ~~A MISDEMEANOR.~~**

18 Any ~~person, firm or corporation~~ violation ~~g any of the provisions of~~ this Article 5 or any  
19 ~~lawful~~ rule or regulation adopted pursuant thereto shall be deemed a public nuisance subject to  
20 enforcement actions pursuant to Administrative Code Chapter 100, which is hereby incorporated in its  
21 entirety, Administrative Code Chapter 80, and Police Code Section 39-1 ~~guilty of a misdemeanor.~~

22  
23 Section 4. The Police Code is hereby amended by revising Article 1, Section 39-1 to  
24 read as follows:  
25

1           **SEC. 39-1. PROCEDURE FOR ASSESSMENT AND COLLECTION OF**  
2           **ADMINISTRATIVE PENALTIES FOR SPECIFIED LITTERING AND NUISANCE**  
3           **VIOLATIONS.**

4           (a) This Section 39-1 shall govern the imposition, assessment, and collection of  
5           administrative penalties imposed pursuant to Sections 37, 38, and 63 of the Police Code;  
6           Sections 41.13, 283.1, 287, 288.1 and 600 of the Health Code; Sections 163, 170, 173, 174,  
7           174.2, 723, 723.5, 724.5, 794, and 1606 of the Public Works Code; and Section 22G.4 of the  
8           Administrative Code.

9  
10           Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
11           intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
12           numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
13           Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
14           additions, and Board amendment deletions in accordance with the “Note” that appears under  
15           the official title of the ordinance.

16  
17           Section 6. Effective Date. This ordinance shall become effective at 12:00 a.m. on the  
18           31st day after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor  
19           returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,  
20           or the Board of Supervisors overrides the Mayor’s veto of the ordinance.

21  
22           APPROVED AS TO FORM:  
23           DAVID CHIU, City Attorney

24           By: Christopher T. Tom  
25           CHRISTOPHER T. TOM  
              Deputy City Attorney

4933-4229-4415, v. 1